

# FORMAL COMPLAINT

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BEFORE THE ARIZONA CORPORATION COMMISSION

2009 MAR -2 P 2:22

## COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR -2 2009

DOCKETED BY

nr

IN THE MATTER OF THE FORMAL )  
COMPLAINT OF FIDENCE DEVELOP- )  
MENT, LLC, AGAINST ARIZONA- )  
AMERICAN WATER COMPANY. )

DOCKET: W-01303A-09-0097

FORMAL COMPLAINT

Pursuant to the provisions of A.R.S. §§ 40-203, 40-241 *et seq.*, 40-246, 40-321, 40-322, 40-331, 40-361 and 40-421 *et seq.*; Arizona Administrative Code ("A.A.C.") A.A.C. R14-2-406(A), R14-2-406 (M), and R14-3-106(L); and Article 15, §§ 3, 4, 12 and 19 of the Arizona Constitution, Fidence Development, LLC, an Arizona limited liability company ("Fidence"), hereby files its formal complaint (the "Complaint") against Arizona-American Water Company, an Arizona corporation ("Arizona-American" or the "Utility"), and requests that the Arizona Corporation Commission ("Commission") issue its order as set forth hereinafter.

In support of its Complaint, Fidence alleges and asserts as follows:

## BACKGROUND

1. Fidence is an Arizona limited liability company which develops real property and constructs homes in Mohave County, Arizona. Chris Read ("Mr. Read") is the Manager of Fidence.

2. Arizona-American is an Arizona public service corporation engaged in the business of providing water and sewer services to the public for profit in portions of

Snell & Wilmer

LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

1 Maricopa, Mohave and Santa Cruz Counties, Arizona. As of December 31, 2007,  
2 Arizona-American provided sewer utility services to approximately 317,000 water and  
3 sewer service customers.<sup>1</sup>

4 3. Arizona-American is a public service corporation as that term is defined  
5 in Article 15, Section 2 of the Arizona Constitution, and as such, is regulated by the  
6 Commission.

7 4. Fidence is the developer of a 116-acre residential development in Mohave  
8 County, Arizona, known as Northpointe ("Northpointe" or the "Development").  
9 Northpointe is located in a portion of the north half of Section 17, Township 14 North,  
10 Range 20 West, Gila and Salt River Base and Meridian ("G&SRB&M"). Northpointe  
11 is planned for approximately 455 single family homes at build-out.

12 5. Northpointe is located within the area covered by the Certificate of  
13 Convenience and Necessity ("CC&N") of Arizona-American for water service. A map  
14 depicting the water CC&N of Arizona-American in Township 14 North, Range 20  
15 West, G&SRB&M, is attached hereto as Exhibit "A" and incorporated herein by this  
16 reference. Northpointe receives sewer service from Lake Havasu City.

17 6. Northpointe is being developed by Fidence in multiple phases.  
18 Northpointe Phase A ("Phase A") consists of 135 residential lots. The final plat for  
19 Phase A was recorded on or about November 10, 2005, as Fee No. 2005111505 with  
20 the Mohave County Recorder. Fidence has constructed 51 homes in Phase A and has  
21 sold 46 homes in Phase A.

22 7. Northpointe Phase B ("Phase B") is planned for 77 residential lots;  
23 Northpointe Phase C ("Phase C") is planned for 45 residential lots; Northpointe Phase  
24 D ("Phase D") is planned for 56 residential lots; Northpointe Phase E ("Phase E") is  
25 planned for 64 residential lots; and Northpointe Phase F ("Phase F") is planned for 78

26 <sup>1</sup> See <http://www.amwater.com/azaw>.

1 residential lots. Preliminary plats for Phase B, Phase C, Phase D, Phase E and Phase F  
2 have been prepared and approved by Mohave County but final plats for these phases  
3 were not yet approved as of the date of this Complaint.

4 8. On or about May 23, 2005, Fidence and Arizona-American executed a  
5 Water Facilities Line Extension Agreement (the "Northpointe LXA" or the  
6 "Agreement") identified by the Utility as LXA 10012. A copy of the Northpointe LXA  
7 is attached hereto as Exhibit "B" and incorporated herein by this reference.

8 9. Pursuant to the terms of the Northpointe LXA, Fidence is required to  
9 construct certain distribution facilities ("Distribution Facilities") as described in Exhibit  
10 B and certain common facilities ("Common Facilities") as described in Exhibit C to the  
11 Agreement.

12 10. Pursuant to Paragraph 5 of the Northpointe LXA, upon construction of  
13 the 80th home in Northpointe, Fidence is required to construct a "Production Well"  
14 that: (i) has a minimum sustained pumping capacity of 483 gallons per minute ("GPM")  
15 of potable water; and (ii) meets water quality standards established by the Federal Safe  
16 Drinking Water Act, Arizona Department of Environmental Quality ("ADEQ"), and  
17 any other federal, State and local regulations (collectively, the "Water Quality  
18 Standards"). Under the Water Quality Standards, the Production Well would be  
19 required to meet the current Federal arsenic standard of 10 parts per billion ("ppb").

20 11. Although Paragraph 5.2 of the Northpointe LXA requires that the  
21 Production Well meet a minimum sustained pumping capacity of 483 GPM, this figure  
22 is incorrect and based upon a mutual mistake between the parties. Originally, Fidence  
23 and Arizona-American intended that the Northpointe LXA cover an additional parcel of  
24 approximately 95 acres. The combined water demand of the 95-acre parcel and the  
25 116-acre Northpointe parcel was calculated at 483 GPM. However, by the time the  
26

1 Agreement was finalized, the 95-acre parcel was removed but the minimum pumping  
2 capacity figure of GPM was not adjusted accordingly.

3 12. The actual pumping capacity required in order to meet the water demand  
4 for Northpointe under Paragraph 5 of the Northpointe LXA is 194 GPM. The 194  
5 GPM figure takes into account Paragraph 5.1 of the Agreement which provides that  
6 Arizona-American is responsible for water supply for the first 80 homes in Northpointe.  
7 Alternatively, if it is determined that Fidence is responsible for water supply for the  
8 first 80 homes, the required GPM for Northpointe is 236 GPM, still well below the 483  
9 GPM figure set forth in the Agreement.

10 13. Mr. Read contacted Arizona-American on multiple occasions to request  
11 that the Northpointe LXA be revised to correctly reflect that 194 GPM of production  
12 capacity is needed from the Production Well to serve Northpointe, but Arizona-  
13 American has refused to agree to revise the Agreement. Rather, Mr. Read was told by  
14 Arizona-American to file an action with the Commission to address the error in the  
15 Northpointe LXA.

16 14. Upon information and belief, Arizona-American currently has sufficient  
17 water capacity to serve up to 80 homes in Northpointe without the need for the  
18 Production Well.

19 15. Upon information and belief, by upsizing an existing Arizona-American  
20 well and pump (the "Existing Arizona-American Well") within the Utility's system,  
21 Arizona-American would have sufficient capacity to serve all of Northpointe without  
22 the need for the Production Well. Fidence offered to pay Arizona-American the costs  
23 of upsizing the Existing Arizona-American Well so that Utility would have sufficient  
24 water production capacity to serve Northpointe without the need for Fidence to  
25 construct the Production Well. However, Arizona-American responded in an e-mail  
26

1 dated October 1, 2008, that upsizing the Existing Arizona-American Well was  
2 unacceptable to the Utility, stating:

3 In addition, if Arizona-American is required to perpetually rely on  
4 increased production from its existing well to serve Northpointe, Arizona-  
5 American will not be able to use that increased production for other  
6 requirements. Arizona-American expects to need that additional  
7 production, in addition to the required North Pointe well [i.e., the  
8 Production Well], to satisfy its future water requirements in this water  
9 district."

10 A copy of the e-mail from Martin Stanek dated October 1, 2008, is attached as  
11 Exhibit "C" and incorporated herein by this reference.

12 16. Upon information and belief, Arizona-American intends to use the  
13 Production Well to satisfy future water requirements of its water customers outside the  
14 boundaries of Northpointe and is requiring Fidence to finance and construct this  
15 additional capacity as a condition of having Arizona-American provide any additional  
16 meters to Northpointe.

17 17. To date, Fidence has paid approximately \$1,635,077 for the Production  
18 Well well site, engineering costs, construction costs, carrying costs and taxes to  
19 construct Distribution Facilities and Common Facilities required under the Northpointe  
20 LXA.

21 18. To date, Fidence has paid approximately \$243,998 to drill the Production  
22 Well. However, water quality tests on the new Production Well indicate that water  
23 quality does not meet the applicable Water Quality Standards, although the Production  
24 Well does appear to provide significant water production capacity.

25 19. Approximately six months after the Northpointe LXA was executed, the  
26 Commission issued Decision No. 68310 on November 14, 2005, which authorized  
Arizona-American to implement an Arsenic Impact Hook-Up Fee (the "Arsenic Impact  
Fee"). On or about November 22, 2005, Arizona-American filed its Arsenic Impact

1 Hook-Up Fee, Schedule AIHUF-1 (the "Arsenic Fee Tariff"), which was effective as of  
2 November 14, 2005. A copy of the Arsenic Fee Tariff is attached hereto as Exhibit "D"  
3 and incorporated herein by this reference. Because the Arsenic Fee Tariff became  
4 effective after the execution of the Northpointe LXA, the Arsenic Fee Tariff is  
5 inapplicable to new connections within Northpointe.

6 20. Although the parties executed the Northpointe LXA on or about May 23,  
7 2005, which was approximately six months prior to the effective date of the Arsenic  
8 Fee Tariff, Arizona-American did not submit the Northpointe LXA to the  
9 Commission's Utilities Division Staff ("Commission Staff") for approval as required by  
10 A.A.C. R14-2-406(M) until approximately September 22, 2008, more than three years  
11 after the Agreement was executed. As of the date of this Complaint, the Northpointe  
12 LXA has not been approved by Commission Staff. Upon information and belief,  
13 Arizona-American's failure to timely submit the Northpointe LXA to Commission Staff  
14 for approval is a violation of A.A.C. R14-2-406(M).

15 21. Section IV(C)(1) of the Arsenic Fee Tariff states as follows:

16 In the event that an Applicant is required to enter into a main extension  
17 agreement, whereby the Applicant agrees to advance the costs of installing  
18 mains, valves, fittings, hydrants and other on-site improvements in order to  
19 extend service in accordance with R-14-2-406(b), payment of the charges  
20 hereunder shall be made by the Applicant within 15 calendar days after  
21 receipt of notification from the Company that the Utilities Division of the  
22 Commission has approved the main extension agreement in accordance  
23 with R-14-2-406(M).

24 22. Even if the Arsenic Fee Tariff is applicable to new connections within  
25 Northpointe, payment of the Arsenic Impact Fee is not due until the Commission Staff  
26 has approved the Northpointe LXA, which has never occurred. Notwithstanding,  
Arizona-American has already sought payment from Fidence of Arsenic Impact Fees  
for Northpointe in the amount of \$125,000. A copy of Invoice No. 07-000016 dated  
February 7, 2007 is attached hereto as Exhibit "E" and incorporated herein by this

reference. The \$125,000 in Arsenic Impact Fees was calculated as follows: \$870 for each of one-hundred thirty six (136) residential meters in Phase A; and \$2,175 for each of three (3) commercial meters in Phase A.

23. Although Arizona-American has invoice Fidence for Arsenic Impact Fees for all of Phase A, Fidence has only constructed 51 residential homes out of the 135 residential homes planned for Phase A.<sup>2</sup>

24. Forty-nine of the completed homes in Phase A of Northpointe have been connected to Arizona-American's water system.

25. Upon information and belief, Arizona-American currently provides water service to 49 homes in Phase A using the Distribution Facilities and the Common Facilities constructed and paid for by Fidence.

26. On August 24, 2007, Arizona-American issued to Fidence a Letter of Final Acceptance for the Northpointe Phase A Distribution Facilities, a copy of which is attached hereto as Exhibit "F" and incorporated herein by this reference.

27. Arizona-American's Letter of Final Acceptance for Northpointe Phase A evidences that the construction of the Distribution Facilities for North Point Phase A was completed, that the construction was acceptable to Arizona-American, and that Arizona-American accepted the Distribution Facilities for North Point Phase A into its water system in August 2007.

28. On November 13, 2007, Arizona-American issued to Fidence a Letter of Final Acceptance for the Northpointe Booster Pump Station and Tank (Common Facilities), a copy of which is attached hereto as Exhibit "G" and incorporated herein by this reference.

29. Arizona-American's Letter of Final Acceptance for the Northpointe Booster Pump Station and Tank evidences that the construction of those Common

<sup>2</sup> Out of the 51 homes built, 46 have closed escrow, 2 are spec homes and 3 are model homes.

1 Facilities was completed, that the construction was acceptable to Arizona-American,  
2 and that Arizona-American accepted the Common Facilities into its water system in  
3 November 2007.

4 30. Upon Information and belief, Arizona-American is using the Northpointe  
5 Booster Pump Station and Tank to serve customers located outside of Northpointe.

6 31. Because Fidence has not paid Invoice No. 07-000016, Arizona-American  
7 refuses to provide additional water meters to Phase A, even though such meters have  
8 been requested.

9 32. Specifically, Arizona-American has refused to set meters for two model  
10 homes constructed by Fidence in Phase A even though Fidence has made a request for  
11 service.

12 33. Pursuant to A.A.C. R14-2-407, Arizona-American is required to serve all  
13 customers in its service territory upon request if adequate facilities and water is  
14 available.

15 34. In addition to requesting that the Northpointe LXA be revised to reflect  
16 the correct well production capacity of 194 GPM for Northpointe, on August 21, 2008,  
17 Mr. Read, on behalf of Fidence, met with representatives of Arizona-American at the  
18 Utility's office in Phoenix to discuss additional modifications to the Northpointe LXA.  
19 Specifically, because the Arsenic Impact Fee was enacted after the Northpointe LXA  
20 was executed, the provision requiring Fidence to construct a Production Well that meets  
21 Water Quality Standards, including the current Federal arsenic standard of 10 ppb,  
22 would almost certainly result in Fidence having to pay twice for arsenic treatment. It  
23 should be noted that Arizona-American knew that there were inaccuracies and  
24 deficiencies with the Northpointe LXA as described above at the time it submitted the  
25 Agreement to Commission Staff for approval on or about September 22, 2008.  
26

1           35. Fidence proposed to pay Arizona-American the Arsenic Impact Fee for  
2 each meter installed and to modify the Northpointe LXA to remove the requirement that  
3 Fidence pay for arsenic treatment on the Production Well, if the Commission  
4 determines the well is needed.

5           36. Arizona-American has demanded that as a condition for service, Fidence  
6 is responsible for paying both the Arsenic Impact Fee for each lot in Northpointe as  
7 well as constructing arsenic treatment, if required, on the Production Well, if the  
8 Commission determines the well is needed.

9           37. Requiring Fidence to pay the Arsenic Impact Fee in addition to  
10 constructing required arsenic treatment on the Production Well is unjust, unreasonable,  
11 improper, arbitrary and a violation of the Commission's rules and regulation as well as  
12 Arizona law.

13           38. Before the Commission Staff approves the Northpointe LXA, all material  
14 mistakes in the Agreement must be corrected. In order to do this: (i) the Commission  
15 must determine whether or not Fidence must construct the Production Well; (ii) if the  
16 Commission determines that Fidence must construct the Production Well, then the  
17 Commission must order that the correct water production capacity for the Production  
18 Well is 194 GPM; (iii) the Commission must resolve the problem regarding the  
19 potential double payment of the Arsenic Impact Fee in the event that Fidence must  
20 construct the Production Well.

21           39. Fidence is entitled to the immediate refund from Arizona-American of  
22 amounts advanced by Fidence for construction of the Distribution Facilities and  
23 Common Facilities under A.A.C. R14-2-406(M) because Utility failed to timely file the  
24 Northpointe LXA with Commission Staff and failed to obtain approval of the  
25 Northpointe LXA. Moreover, Arizona-American knew that there were inaccuracies  
26 and deficiencies with the Northpointe LXA as described above at the time it submitted

1 the Agreement to Commission Staff for approval on September 22, 2008. These  
2 inaccuracies and deficiencies were not disclosed to Commission Staff.

3 40. Upon information and belief, Arizona-American's refusal to allow  
4 Fidence to upsize the Existing Arizona-American Well and to require Fidence to  
5 finance unnecessary water infrastructure as a condition for service is "discriminatory"  
6 and prohibited under A.R.S. § 40-334(A).

### 7 JURISDICTION

8 41. The Commission has jurisdiction over this Complaint pursuant to A.R.S.  
9 § 40-321(A) which provides as follows:

10 When the commission finds that the equipment, appliances, facilities  
11 or service of any public service corporation, or the methods of  
12 manufacture, distribution, transmission, storage or supply employed  
13 by it, are unjust, unreasonable, unsafe, improper, inadequate or  
14 insufficient, the commission shall determine what is just, reasonable,  
15 safe, proper, adequate or sufficient, and shall enforce its  
16 determination by order or regulation.

17 42. The Commission has jurisdiction over this Complaint pursuant to A.R.S.  
18 § 40-331(A) which provides as follows:

19 When the commission finds that additions or improvements to or  
20 changes in the existing plant or physical properties of a public  
21 service corporation ought reasonably to be made, or that a new  
22 structure or structures should be erected, to promote the security or  
23 convenience of its employees or the public, the commission shall  
24 make and serve an order directing that such changes be made or such  
25 structure be erected in the manner and within the time specified in  
26 the order. If the commission orders erection of a new structure, it  
may also fix the site thereof.

43. In addition to the statutes cited above, the Commission has jurisdiction  
over this Complaint pursuant to A.R.S. §§ 40-203, 40-246, 40-322, 40-334(A), 40-361  
and 40-421 *et seq.*, and Article 15, §§ 3, 4, 12 and 19 of the Arizona Constitution.

**COUNT I: REVISION OF NORTHPOINTE LXA**

44. Fidence hereby incorporates by reference the allegations contained in Paragraphs 1-43 of this Complaint.

45. Although the Northpointe LXA requires that the Production Well meet a minimum sustained pumping capacity of 483 GPM, the actual water production requirements to meet the demand for Northpointe is only 194 GPM.

46. If the Commission determines that Fidence must construct the Production Well, then Paragraph 5.2 of the Northpointe LXA should be corrected to reflect that a production capacity of not less than 194 GPM is required to serve Northpointe.

47. Because the Arsenic Impact Fee was enacted after the Northpointe LXA was executed, the provision requiring Fidence to construct a Production Well that meets Water Quality Standards, including the current Federal Arsenic Standard of 10 ppb, would result in Fidence having to pay twice for arsenic treatment for the same water.

48. Fidence has proposed to Arizona-American that it would pay the Arsenic Impact Fee for each meter installed, and that the Northpointe LXA be modified to reflect that Fidence would not be responsible for the cost of arsenic treatment for the Production Well, if the Commission determines that the Production Well is required.

49. In the alternative, if the Commission determines that Fidence must construction the Production Well, and Fidence is responsible for the cost of arsenic treatment for the Production Well, then Fidence should not be required to pay the Arsenic Impact Fees for connections in Northpointe.

50. Requiring Fidence to pay for water infrastructure that is not needed to serve Northpointe is unjust, unreasonable, improper, arbitrary and a violation of Commission rules and regulation as well as Arizona law.

51. Requiring Fidence to pay the Arsenic Impact Fee in addition to constructing the Production Well which meets Water Quality Standards including

arsenic standards is unjust, unreasonable, improper, arbitrary and a violation of Commission rules and regulation as well as Arizona law.

**COUNT II: VIOLATION OF A.A.C. R14-2-406(M)**

52. Fidence hereby incorporates by reference the allegations contained in Paragraphs 1-51 of this Complaint.

53. A.A.C. R14-2-406(M) states:

All agreements under this rule shall be filed with and approved by the Utilities Division of the Commission. No agreement shall be approved unless accompanied by a Certificate of Approval to construct as issued by the Arizona Department of Health Services. Where agreements for main extensions are not filed and approved by the Utilities division, the refundable advance shall be immediately due and payable to the person making the advance.

54. Fidence and Arizona-American entered into the Northpointe LXA on or about May 23, 2005.

55. Fidence has paid approximately \$1,635,077 for the Well Production well site, engineering costs, construction costs, carrying costs and taxes to construct the Distribution Facilities and Common Facilities for Northpointe. Arizona-American accepted the Distribution Facilities for Phase A on or about August 24, 2007, and the Common Facilities on or about November 13, 2007. Arizona-American is using the Distribution Facilities for Phase A and Common Facilities to provide water service to approximately 49 customers residing in Northpointe.

56. Arizona-American did not submit the Northpointe LXA to Commission Staff for approval until September 22, 2008, which is a violation of A.A.C. R14-2-406(M). The Northpointe LXA has not been approved by Commission Staff as of the date of this Complaint. Arizona-American knew that there were inaccuracies and deficiencies with the Northpointe LXA as described above at the time it submitted the

1 Agreement to Commission Staff for approval. These inaccuracies and deficiencies  
2 were not disclosed to Commission Staff.

3 57. The approximately \$1,635,077 paid by Fidence for the Production Well  
4 well site and to construct the water distribution infrastructure for Northpointe Phase A  
5 constitutes an advance in aid of construction under A.A.C. R14-2-406. Fidence is  
6 entitled to immediate refund from Arizona-American in the amount of \$1,635,077  
7 pursuant to A.A.C. R14-2-406(M) because the Utility failed to file the Northpointe  
8 LXA with Commission Staff and failed to obtain approval of the Northpointe LXA.

9 **COUNT III: VIOLATION OF A.A.C. R14-2-407(A)**

10 58. Fidence hereby incorporates by reference the allegations contained in  
11 Paragraphs 1-57 of this Complaint.

12 59. A.A.C. R14-2-407(A) states:

13 Each Utility shall be responsible for providing potable water to the  
14 customer's point of delivery.

15 60. Because Fidence has not paid Invoice No. 07-000016, Arizona-American  
16 refuses to provide any additional water meters for Phase A, even though such meters  
17 have been requested.

18 61. Specifically, Arizona-American has refused to set meters for two model  
19 homes constructed by Fidence in Phase A even though Fidence has made a request for  
20 service.

21 62. Arizona-American has violated A.A.C. R14-2-407(A) by failing to  
22 provide service to all customers in its service territory because such request for service  
23 had been made and Arizona-American has adequate facilities and water available to  
24 provide such service.

**COUNT IV: VIOLATION OF A.R.S. § 40-334(A)**

63. Fidence hereby incorporates by reference the allegations contained in Paragraphs 1-62 of this Complaint.

64. A.R.S. § 40-334(A) states:

A public service corporation shall not, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage.

65. Upon information and belief, Arizona-American has sufficient capacity to serve all or a portion of Northpointe with Utility's existing facilities, without the need for Fidence to construct the Production Well.

66. Although the Northpointe LXA requires that the Production Well meet a minimum sustained pumping capacity of 483 GPM, the actual pumping requirements to meet demand for Northpointe is only 194 GPM.

67. Arizona-American intends to use the Production Well to satisfy future water requirements unrelated to Northpointe and have Fidence finance and construct that additional capacity.

68. Although Fidence has offered to pay to upsize the Existing Arizona-American Well to meet the water demand of Northpointe, Arizona-American has refused the offer.

69. Arizona-American's representative stated that "if Arizona-American is required to perpetually rely on increased production from its existing well to serve Northpointe, Arizona-American will not be able to use that increased production for other requirements. Arizona-American expects to need that additional production, in addition to the required Northpointe well, to satisfy its future water requirements in this water district." Arizona-American has refused to provide additional water service to new connections in Northpointe.

**RELIEF REQUESTED**

WHEREFORE, Fidence Development, LLC, requests that the Commission enter its order in this Complaint case ruling as follows:

A. Arizona-American currently has sufficient water production capacity to serve Northpointe and Fidence is not required to construct the Production Well.

B. If the Commission determines that additional water capacity is needed to serve Northpointe, then Fidence should be permitted to pay to upsize the Existing Arizona-American Well to provide water production capacity for Northpointe in lieu of constructing the Production Well.

C. If the Commission determines that Fidence must construct the Production Well in order for Arizona-American to serve Northpointe, then the Northpointe LXA should be corrected to specify that the Production Well must provide not less than 194 GPM of production capacity for Northpointe and not 483 GPM.

D. If the Commission determines that Fidence must construct the Production Well in order for Arizona-American to serve Northpointe, then Fidence should be required to pay Arsenic Impact Fees for Northpointe under the Arsenic Fee Tariff and should not be required to pay for any required arsenic treatment on the Production Well.

E. If the Commission determines that Fidence must construct the Production Well and that Fidence must also pay for arsenic treatment on the Production Well, then Fidence should not be required to pay Arsenic Impact Fees for Northpointe under the Arsenic Fee Tariff.

F. Finding that Arizona-American violated A.A.C. R14-2-406(M) by failing to submit the Northpointe LXA to Commission Staff for approval, and ordering that Arizona-American immediately refund to Fidence the amount of \$1,635,077, which is the cost of the Distribution Facilities for Phase A and Common Facilities constructed by Fidence to serve Northpointe.

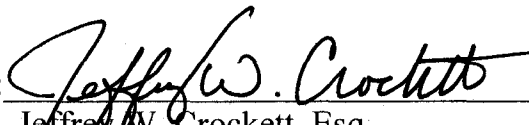
G. Ordering Arizona-American to immediately provide meters to Fidence for the two model homes constructed and any additional homes for which water service is requested.

H. Imposing fines and penalties against Arizona-American for the violations alleged in this Complaint pursuant to A.R.S. §§ 40-421 *et seq.*

I. Providing such other relief as the Commission deems just and reasonable.

RESPECTFULLY submitted this 2nd day of March, 2009.

SNELL & WILMER

By:   
Jeffrey W. Crockett, Esq.  
Robert J. Metli, Esq.  
400 East Van Buren  
One Arizona Center  
Phoenix, Arizona 85004-2202  
Attorneys for Fidence Development, LLC

ORIGINAL and thirteen (13) copies of the foregoing Complaint filed with Docket Control this 2nd day of March, 2009.


COPY of the foregoing Complaint hand-delivered this 2nd day of March, 2009 to:

Chairman Kristin K. Mayes  
Commissioner Gary Pierce  
Commissioner Paul Newman  
Commissioner Sandra D. Kennedy  
Commissioner Bob Stump  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington Street  
Phoenix, Arizona 85007

1 Lyn A. Farmer, Chief Hearing Officer  
2 ARIZONA CORPORATION COMMISSION  
3 1200 West Washington Street  
4 Phoenix, Arizona 85007

4 Ernest Johnson, Director  
5 Utilities Division  
6 ARIZONA CORPORATION COMMISSION  
7 1200 West Washington Street  
8 Phoenix, Arizona 85007

7 Janice Alward, Chief Counsel  
8 Legal Division  
9 ARIZONA CORPORATION COMMISSION  
10 1200 West Washington Street  
11 Phoenix, Arizona 85007

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**LIST OF EXHIBITS**

- Exhibit A - Map depicting CC&N of Arizona-American Water Company in Township 14 North, Range 20 West, G&SRB&M.
- Exhibit B - Northpointe LXA.
- Exhibit C - E-mail from Martin Stanek dated October 1, 2008.
- Exhibit D - Arsenic Impact Hook-Up Fee AIHUF-1
- Exhibit E - Invoice No. 07-000016.
- Exhibit F - Letter of Final Acceptance dated August 24, 2007, for Northpointe Phase A Distribution Facilities.
- Exhibit G - Letter of Final Acceptance dated November 13, 2007, for the Northpointe Booster Pump Station and Tank.

**EXHIBIT "A"**

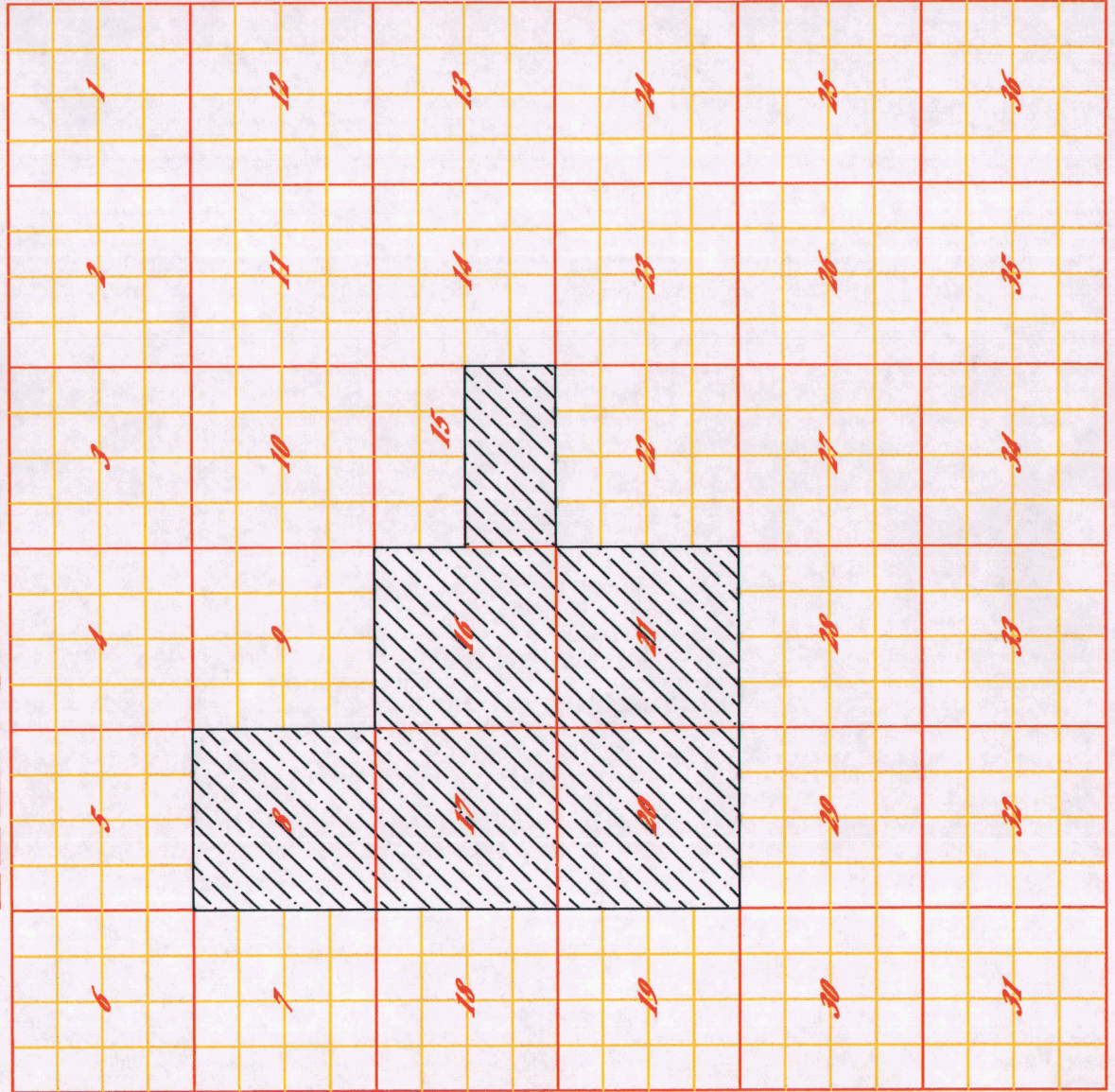
# COUNTY: Mohave

**RANGE 20 West**

**TOWNSHIP 14 North**



WS-1303 (8)  
Arizona-American Water Company



**EXHIBIT "B"**

Mr. Chris Read

Development Services

Fidence Development  
731 South Highway 101, Suite 12  
Solana Beach, CA 92075

Name Karan Moore  
Phone 623-445-2441  
Fax 623-445-2452  
E-Mail [Karan.moore@amwater.com](mailto:Karan.moore@amwater.com)

July 12, 2005

**Fully executed Water Line Extension Agreement**

Dear Mr. Read:

Accompanying this letter is fully executed Water Facilities Line Extension Agreement for the following project:

**1. LXA # 10012 – North Pointe**

It is for your use and permanent record. If you have any questions, please call me directly. Thank you.

Sincerely,



Karan Moore  
Development Services

Arizona American Water

101 Corporate Center  
19820 N. 7<sup>th</sup> Street -  
Suite 201  
Phoenix, Arizona 85024  
USA

T +1 623 445 2400  
F +1 623 445 2452  
I [www.amwater.com](http://www.amwater.com)

**WATER FACILITIES  
LINE EXTENSION AGREEMENT**

This Agreement (the "Agreement") is by and between Arizona-American Water Company, an Arizona corporation, ("Utility"), with offices at 19820 N. 7<sup>th</sup> Street, Suite 201, Phoenix, Arizona 85024, and Fidence Development, LLC, an Arizona limited liability company ("Developer"), with offices at 731 South Highway 101, Suite 12, Solana Beach, California, 92075.

**Recitals:** (capitalized terms not defined in the text are defined in Article 1)

- Utility provides public utility water service in Lake Havasu City, Arizona.
- Developer proposes to develop a 116-acre development with approximately 455 single-family homes known as North Pointe (the "Development"), located at the southwest corner of London Bridge Road and North View Drive as described in Exhibit A.
- Utility holds a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission ("Commission") which authorizes Utility to provide public utility water service to the Development.
- To meet the public utility water service needs of the Development, certain Distribution Facilities, described in Exhibit B, and Common Facilities, described in Exhibit C, must be constructed.
- Utility is willing to have Developer design and construct the Distribution Facilities, Common Facilities and the Production Well, subject to Utility's written approval of the design and construction.
- Utility and Developer must obtain certain regulatory approvals before Distribution Facilities, Common Facilities and the Production Well can be constructed and water service provided to the Development.

In consideration of these recitals, the parties agree as follows:

**1. Definitions:** Capitalized terms are defined as follows:

- 1.1. "ADEQ" means the Arizona Department of Environmental Quality.
- 1.2. "ADWR" means the Arizona Department of Water Resources.
- 1.3. "Agreement" means this Agreement, including all of its exhibits, amendments, and addenda.
- 1.4. "Common Facilities" means the facilities described in Article 4, and specified in Exhibit C.

1.5. "Common Facilities Sites" means one or more parcels of property upon which will be located certain Common Facilities as described in Paragraph 4.3.

1.6. "Developer" means Fidence Development LLC, an Arizona limited liability company, and its successors and assigns.

1.7. "Commission" means the Arizona Corporation Commission.

1.8. "Development" means a 116-acre development to be constructed by Developer, with approximately 455 single-family homes known as North Pointe and located at the southwest corner of London Bridge Road and North View Drive, as described in Exhibit A.

1.9. "Distribution Facilities" means the water-related facilities needed to be designed, constructed or installed by Developer for the purpose of providing water service to individual lots, housing, or commercial units within Development as set forth in Exhibit B.

1.10. "Final Acceptance" means Utility's written acceptance of a Phase of the Distribution Facilities or of the Common Facilities, to be issued after Operational Acceptance and full completion of the Distribution Facilities, Common Facilities or the Production Well, and after Developer has provided all required submittals set forth in Paragraph 6.9 and all fees set forth in Paragraphs 3.6 and 6.1.

1.11. "Master Plan" means the approved water master-plan report submitted to Utility by Developer's engineer, showing sizes and approximate locations of Distribution Facilities, Common Facilities and the Production Well to be constructed to allow Utility to provide water service to Development.

1.12. "Operational Acceptance" means Utility's written acceptance of a Phase of the construction of the Distribution Facilities or of the Common Facilities, subject to further inspection by Utility and Developer's correction of any outstanding punch list items identified by Utility.

1.13. "Production Well" means a potable-water well as specified in Paragraph 5.2.

1.14. "Phase" means one of no more than seven specified portions of the Development, identified in Exhibit D, and containing at least 50 homes, which Developer intends to construct and develop independently from other portions of the Development.

1.15. "Utility" means Arizona-American Water Company, an Arizona corporation, its successors and assigns.

## **2. Authorizations:**

2.1. Utility will timely use its reasonable best efforts to obtain and renew any authorizations that are required by law or regulation to provide water services to Development. These authorizations include but are not limited to certificates of convenience and necessity, operating agreements, franchises, permits and similar authorizations obtained from regulatory agencies and other governmental agencies.

2.2. Developer will obtain a Certificate of Approval to Construct from ADEQ and all required zoning clearances, construction permits, and similar authorizations from regulatory agencies and other governmental agencies for all Distribution Facilities, Common Facilities and the Production Well.

2.3. Utility's obligations under this Agreement are contingent upon each party's receipt of all authorizations described in this Article 2. Utility is not liable to Developer or its contractors and subcontractors for damages if Developer begins construction or authorizes the start of construction before these authorizations are obtained.

**3. Distribution Facilities:**

3.1. Developer will design, construct and install, or cause to be designed, constructed or installed, the Distribution Facilities, as detailed in Exhibit B. Developer's estimated schedule of materials, unit quantities, and costs is also set forth in Exhibit B. Developer will pay all of the costs of constructing, installing, and connecting the Distribution Facilities to Utility's existing system including, but not limited to, the costs of engineering, materials, labor, transportation, equipment, necessary permits and approvals, easements, testing, corrections, insurance and bonds.

3.2. Developer estimates a construction start date for the Distribution Facilities in the first Phase of the Development of June 1, 2005, with a construction completion date of December 31, 2005.

3.3. Developer's costs for the construction and installation of the Distribution Facilities, including the plan-review fee identified in Paragraph 6.1, are advances in aid of construction and subject to refund in accordance with Paragraph 7.3.

3.4. Developer will schedule completion of the Distribution Facilities associated with a Phase of the Development to enable Utility to provide water service to that Phase of the Development as such service is requested.

3.5. If requested by Utility, Developer will oversize any of the Distribution Facilities according to specifications provided by Utility to Developer. Utility will reimburse Developer for the incremental additional cost of oversizing the Distribution Facilities. After Utility's Final Acceptance of any oversized Distribution Facilities, Developer may request reimbursement from Utility by submitting a written invoice to Utility, properly supported by the information identified under Paragraph 6.9. Utility will pay the invoice within 30 days of its receipt.

3.6. Before Final Acceptance of the Distribution Facilities in a Phase, or upon requesting water service to that Phase, whichever is first, Developer will submit a cash payment for service and meter installations as specified in Utility's then-current tariff, for each service line and water meter to be set in that Phase by Utility. Upon Developer's request, Utility will install water meters and begin service. Each service-line and meter-installation payment is as an advance in aid of construction, and subject to refund in accordance with Paragraph 7.3.

**4. Common Facilities:**

4.1. Developer will design, construct and install, or cause to be designed, constructed or installed, the Common Facilities, as detailed in Exhibit C. The Common Facilities consist of a 750,000 gallon water storage tank, a booster pumping station and related facilities. Developer's estimated schedule of materials, unit quantities, and costs is also set forth in Exhibit C. Developer will pay all of the costs of constructing, installing, and connecting the Common Facilities including, but not limited to, the costs of engineering, materials, labor, transportation, equipment, necessary permits and approvals, easements, testing, corrections, insurance and bonds.

4.2. On or before the date that ten homes have been constructed in the Development, Developer will construct, and obtain Utility's Operational Acceptance of, the Common Facilities. Utility is not obligated to provide water service to any Phase or to issue Operational Acceptance for the Distribution Facilities serving any Phase before it issues Operational Acceptance for the Common Facilities.

4.3. The dimensions of the Common Facilities Sites and the locations of the Common Facilities within the Common Facilities Sites are shown in Exhibit C. Before Utility's Operational Acceptance of any portion of the Common Facilities, Developer will, at no cost to Utility, convey or cause to be conveyed to Utility, by warranty deed, free and clear title to the Common Facilities Sites, with adequate legal access from public roadways as approved by Utility in writing. Before conveying the Common Facilities Sites to Utility, Developer will provide to Utility for approval a Phase I Environmental Investigation, an A.L.T.A. survey, and soil reports for the Common Facilities Sites. Existing Phase I Environmental Investigations and soil reports and a recorded plat identifying the Common Facilities Sites, if acceptable to Utility, may be provided in lieu of new reports.

4.4. Developer's costs associated with its construction of the Common Facilities are contributions in aid of construction and not eligible for reimbursement under Paragraph 7.3.

**5. Production Well:**

5.1. On or before the date that 80 homes have been constructed in the Development, Developer will construct, and obtain Utility's Operational Acceptance of, the Production Well. Utility is not obligated to provide water service to any homes in addition to 80 homes in the Development or to issue Operational Acceptance for the Distribution Facilities serving any additional homes in the Development before it issues Operational Acceptance for the Production Well. Developer's costs for the design, construction and installation of the Production Well, including the plan-review fee identified in Paragraph 6.1, are advances in aid of construction and subject to refund in accordance with Paragraph 7.3.

5.2. Developer will design the required Production Well to provide a minimum sustained pumping capacity of 483 gpm of potable water that meets current and proposed (as of the date of this Agreement) water quality standards established by the Federal Safe Drinking Water Act, ADEQ, and any other Federal, State and local regulations (collectively, the "Water Quality Standards"). Upon completion of drilling and casing the Production Well, Developer will test

pump and sample the Production Well to determine the sustained pumping capacity and water quality. Utility will evaluate the test results and direct the Developer to either complete equipping of the Production Well or abandon the Production Well and drill a replacement well as follows:

5.2.a. If test pumping and sampling of the Production Well determines that the actual sustainable capacity of the Production Well is less than 483 gpm, or that the Production Well does not or cannot be made to meet Water Quality Standards, Utility will, in good faith, evaluate Utility's ability to use the Production Well for potable water supply.

5.2.b. Should Utility determine that the Production Well cannot be used for potable water supply as set forth in this Paragraph 5.2, Developer will abandon the Production Well in accordance with ADWR's rules and practices at no cost to Utility. The cost of designing, constructing, and abandoning the Production Well will be borne solely by Developer, and is an advance in aid of construction under this Agreement. Developer will then design, construct, and provide a replacement production well under the requirements of this Paragraph 5.2.

5.2.c. Should Utility determine that the Production Well can be used for potable water supply, Utility will provide to Developer the requirements to complete equipping the Production Well and for any additional facilities that will be required for Utility to provide potable water service to the Development. If Utility determines that the Production Well can be used for potable water service to the Development under this Paragraph 5.2, then Developer will have satisfied the requirements of this Paragraph.

5.3. If requested by Utility, Developer will oversize the Production Well pump and associated facilities according to Utility's specifications. Utility will reimburse Developer for the incremental additional cost of oversizing the Production Well pump and associated facilities. After Utility's Final Acceptance of the Production Well and associated facilities, Developer may request reimbursement for any costs of oversizing by submitting a written invoice to Utility, properly supported by the information identified under Paragraph 6.9. Utility will pay the invoice within 30 days of its receipt.

## **6. Construction Administration:**

6.1. Upon execution of this Agreement, Developer will pay to Utility a plan-review fee equal to 4.84% of the total costs set forth on Exhibits B and C to compensate Utility for the cost of its coordination, reviews, inspections, testing, and approvals (including all related overhead costs) incurred by Utility under this Agreement. The 4.84% plan-review fee is deemed the final and reconciled costs for these services provided by Utility. Utility will credit toward the plan-review fee any previously paid deposits concerning the Distribution Facilities, Common Facilities and the Production Well. The plan-review fee attributable to the Distribution Facilities and the Production Well is an advance in aid of construction and subject to refund in accordance with Paragraph 7.3.

6.2. All plans, specifications, construction and installation of the Distribution Facilities, Common Facilities and the Production Well must accord with good utility practices, the rules, regulations and requirements of ADEQ, Utility's specifications and details, and the requirements

of all other governmental agencies with jurisdiction over the construction of potable water systems. Developer will submit all plans and specifications for the Distribution Facilities, Common Facilities and the Production Well to Utility for review and approval. Developer will also submit copies of preliminary plats, final plats, address maps, projected home closings by quarter, and other items reasonably requested by Utility. Construction will not commence until all plans and specifications have been approved in writing by Utility. Utility will not unreasonably withhold or delay its approval. Developer must begin substantial construction within one year from the date of the initial plan approval. If Developer begins construction of any Distribution Facilities, Common Facilities or Production Well before all required approvals have been obtained, this construction will be at Developer's sole risk, and Developer will be responsible for the costs of any repairs, alterations or reconstruction work required in order to conform the Distribution Facilities, Common Facilities or Production Well.

6.3. Developer will, at no cost to Utility, obtain all necessary zoning and other applicable approvals of Utility or any governmental agencies with jurisdiction over the construction of the Distribution Facilities, Common Facilities and the Production Well.

6.4. At the time Utility issues its Operational Acceptance of a Phase of the Distribution Facilities or of the Common Facilities, Developer will provide Utility with evidence satisfactory to Utility that the Distribution Facilities, Common Facilities and the Production Well are located within dedicated streets, public utility easements, public rights-of-way, or real property owned by Utility. If any Distribution Facilities, Common Facilities or the Production Well are not located within dedicated streets, public utility easements, public rights-of-way, or real property owned by Utility, then Developer will grant to Utility, at the time Utility issues its Operational Acceptance, non-exclusive easements, free from all liens and security interests thereon, and in a form that is satisfactory to Utility, as may be necessary to operate, maintain and repair the Phase of the Distribution Facilities, Common Facilities or the Production Well, as applicable. Unless otherwise mutually agreed upon in writing, such easements

- will be free of physical encroachments, encumbrances or obstacles
- will have a minimum width of 12 feet, and
- will require that the mains and service lines will be separated by a reasonable distance from other utility lines and facilities to prevent damage or conflicts in the event of repairs or maintenance.

6.5. Utility will provide, and Developer will comply with, inspection and testing requirements for the Distribution Facilities, Common Facilities and the Production Well. Developer will notify Utility when the facilities under construction are ready for inspection and testing. Utility will then promptly inspect these facilities to determine if it can issue Operational Acceptance. Utility will not issue Operational Acceptance unless it has determined, following inspection and testing, that the facilities have been constructed in accordance with the approved plans and specifications and will operate satisfactorily. Following an inspection, Developer will promptly correct all defects and deficiencies in construction, materials and workmanship.

6.6. A Phase of the Distribution Facilities will not be placed in service until:

- Utility has completed its inspection;
- ADEQ has issued its Approval of Construction; and
- Utility has issued its Operational Acceptance.

6.7. Utility's Operational Acceptance may contain a punch list of items that require correction. If there are no items that require correction, Utility will promptly issue a written Final Acceptance. Otherwise, all punch list items must be corrected to Utility's reasonable satisfaction before Utility will issue a Final Acceptance. For one year after Utility's written Final Acceptance, Developer will, upon Utility's request, promptly correct all defects and deficiencies in construction, materials and workmanship discovered by Utility. Developer will repair or cause to be repaired promptly, and at no cost to Utility, all damage to the Distribution Facilities, Common Facilities or the Production Well caused by construction operations within Development. Neither Utility's inspection nor its acceptance of Distribution Facilities, Common Facilities or the Production Well relieves or limits Developer's responsibilities and liabilities under this Agreement, or for approval of fire protection requirements set forth by a jurisdictional fire agency.

6.8. Upon Operational Acceptance, the Distribution Facilities, Common Facilities and the Production Well become and remain Utility's sole property without the requirement of any written document of transfer. Developer will, however, furnish any document pertaining to ownership and title that may be requested by Utility, including documents which evidence or confirm transfer of possession to Utility, and good and merchantable title free and clear of liens (except for liens for taxes not yet payable or liens associated with assessments by special taxing districts), or which contain provisions for satisfaction of liens by Developer. All risk of loss of Distribution Facilities, Common Facilities and the Production Well remains with Developer until Utility's written Operational Acceptance. Developer acknowledges that Utility has the right to, and may, connect its existing or future water systems to Distribution Facilities, Common Facilities and the Production Well.

6.9. Developer will, within 30 days of Utility's Operational Acceptance of any Phase of the Distribution Facilities, Common Facilities or the Production Well, furnish Utility with:

- copies of all contracts and paid bills, invoices and other statements of expenses incurred by Developer, to support the costs of materials, labor, equipment, supplies, and other costs of construction;
- lien waivers and releases from contractors, subcontractors and vendors for materials, equipment, supplies and construction;
- receipts, specifying exact amount of payments in full by Developer to all contractors, subcontractors and vendors for all materials, labor, equipment, supplies, labor and other costs of construction;
- "as-built" drawings on 4-mil Mylar, certified as to correctness by an engineer registered in the State of Arizona and showing the locations, materials, and respective sizes, and pertinent construction details; and

- CAD files, in electronic format acceptable to Utility, of the construction drawings and a plat map, in accordance with Utility's specifications.

**7. Advances in Aid of Construction:**

7.1. Upon Operational Acceptance, Developer's cost of construction and installation of Distribution Facilities and the Production Well—as evidenced by the invoices furnished to Utility under Paragraph 6.9—are advances in aid of construction and eligible for refund under Paragraph 7.3. Refundable advances in aid of construction also include any plan-review fees paid under Paragraph 6.1 that are associated with Distribution Facilities and Production Well and the service and meter installation fees paid under Paragraph 3.6.

7.2. If all or any portion of Developer's advances in aid of construction, whether already paid or to be paid, will constitute taxable income to Utility, Developer will advance funds to Utility in an amount required to gross-up the advance so that Utility's after-tax benefit will equal what it would be if no taxes were owed.

7.2.a. For advances already made, Developer will remit the required funds to Utility within 30 days after Utility notifies Developer that the advances will likely constitute taxable income.

7.2.b. Future advances, if any, will also be grossed up once Utility notifies Developer that the advances will likely constitute taxable income.

7.2.c. Utility's notice will include documentation reasonably necessary to substantiate its liability for income taxes, such as a determination or notification by a governmental authority, amendment to the Internal Revenue Code, a regulation promulgated by the Internal Revenue Service, or similar change to any statute, rule or regulation relating to this matter.

7.2.d. If additional funds are paid by Developer under this Paragraph 7.2, these funds will also constitute advances in aid of construction refundable in accordance with Paragraph 6.3.

7.2.e. Developer also indemnifies and holds Utility harmless for, from and against any tax-related interest, fines and penalties assessed against Utility and other costs and expenses incurred by Utility, including legal fees, as a consequence of Developer's late payment of the amounts described above.

7.2.f. The gross-up amount will be calculated as follows:

$$G = A \times R / (1 - R)$$

Where: G = Gross-up amount;

A = Amount of advances; and

R = Percentage tax rate.

7.3. Refunds of advances in aid of construction will be made in accordance with this paragraph.

7.3.a. Refund year one will begin on the first July 1 after the first date of Operational Acceptance of any Distribution Facilities and will end on the next June 30. Refund years two through ten will follow from each July 1.

7.3.b. For each refund year, refunds will be made based on the cumulative, applicable, advances in aid of construction as of the first day of the refund year. Each refund year, Utility will refund ten percent of Utility's total tariffed water revenues from customers in the Development (excluding all gross receipts taxes or sales taxes, and all District, Municipal, County, State or Federally imposed regulatory assessments). For each refund year, Utility will pay a refund to Developer by August 31 (following the June 30 end of a refund year). Refunds will be paid for each of the refund years in which Utility receives revenue, but the total refunds to be paid for Distribution Facilities cannot exceed the total amounts paid by Developer as advances in aid of construction in the Development. Any balance remaining at the end of the ten-year period is nonrefundable. No interest will be paid on any amount of the advances in aid of construction.

## **8. General Provisions:**

8.1. After satisfaction of the following conditions, Utility will provide water service to each Phase of the Development in accordance with the rates, charges and conditions set forth in Utility's Commission-approved tariffs:

- Utility has issued Operational Acceptance of the Distribution Facilities for the Phase; and
- Developer has paid all fees required by this Agreement or by the terms of Utility's then-current and applicable tariffs with respect to the Phase.

Utility's rates, charges and tariffs are subject to change from time to time upon approval by the Commission.

8.2. Developer may obtain water for construction uses within Development from its own well or from another source. Upon Developer's request, Utility will provide Developer water for construction uses within Development, but only if available after serving all other customers connected to Utility's system. Utility expects to meter all construction water, but upon Developer's requests to use unmetered water and Utility's approval, water used to construct water or wastewater facilities may be unmetered. Utility will estimate, in accordance with Utility's standard procedures, all unmetered water usage. Whether estimated or metered, Utility will bill Developer at Utility's then-current tariff rate. Utility may estimate and bill Developer for any unauthorized unmetered water use for Development. If Developer continues to use unauthorized unmetered water use after Utility notifies Developer to stop using unauthorized unmetered water, Utility may terminate this Agreement and have no further obligation to provide water service

8.3. Utility will use its reasonable best efforts to maintain satisfactory and continuous service, but does not guarantee a continuous supply of water service. Utility is not liable for damages occasioned by interruptions or failure to commence service or unsatisfactory service or any act or failure to act arising out of this Agreement caused by an act of God or the public enemy, accident, fire, explosions, strikes, riots, war, delay in receiving shipments of required material, order of any court or judge granted in any bona fide adverse legal proceedings or action, or any order of any commission or tribunal having jurisdiction in the premises; or without limitation by the preceding enumeration, any other act or thing reasonably beyond its control or incident to interruptions necessary for repairs or changes in Utility's production, storage, transmission, and distribution facilities.

8.4. Utility does not warrant, guarantee, or represent that the water utility services it provides will comply with any fire-protection requirements of any governmental agency, or of any county, municipal, or private fire protection providers. Utility will only supply water at pressures required for the normal operation of its system, but at not less than a pressure of 20 pounds per square inch.

8.5. Developer must abandon all wells within the Development that are not owned or to be owned by Utility in accordance with A.A.C. R12-15-816, the Arizona Department of Water Resources and Utility's rules, standards and specifications for well abandonment; provided, however, that Developer may utilize any such wells solely for the purposes set forth in Paragraph 8.2 so long as Developer is constructing within the Development. Utility acknowledges that Developer may be utilizing certain wells for construction water supply and that the abandonment of wells required under this Paragraph 8.5 will occur only upon Operational Acceptance of the Distribution Facilities for the final Phase or upon completion of construction within the Development, whichever occurs later. Final Acceptance of the Distribution Facilities for the final Phase will not be granted prior to the abandonment of all wells identified by Utility in accordance with A.A.C. R12-15-816.

8.6. Before beginning construction of Distribution Facilities, Developer will furnish Utility with appropriate certificates of insurance coverage effective during the period of construction in the following types and amounts:

- Worker's Compensation Insurance and Occupational Disease Disability Insurance in the benefit amounts required by the laws and regulations of the State of Arizona.
- Commercial General Liability Insurance, including operations and protective liability coverage, with limits of not less than \$2,000,000 combined single limit for bodily injury (including death) and property damage. When the work to be performed requires blasting, Developer's insurance will specifically cover that risk. **Utility will be named as an additional insured.**
- Comprehensive Automobile Liability Insurance with limits of \$300,000/\$1,000,000 covering all owned and non-owned automobiles or trucks used by or on behalf of Developer in connection with the work.

8.7. Developer indemnifies and holds harmless Utility, its officers, directors, agents, and employees from and against all claims, damages, costs and expenses, including penalties and

assessments, attorneys' fees and court costs, to which they or any of them may be subjected by reason of injury, death, loss, claim, penalty, assessment or damage caused or contributed to by the active or passive negligence of Developer, its agents, servants, employees, contractors or subcontractors in the performance of its obligations under this Agreement or in connection therewith. If any suit or other proceeding is brought on this account, Developer will assume the defense at Developer's expense and will pay all judgments rendered therein. The foregoing indemnity does not cover any negligent or wrongful acts of Utility, its officers, directors, agents or employees.

8.8. If a party waives or fails to enforce any provision of this Agreement, it does not mean that the party has generally waived the Agreement or relinquished any rights under the Agreement, and the Agreement remains in full force and effect.

8.9. Communications under this Agreement should be addressed as follows:

Developer:	Chris Read, Manager Fidence Development 731 South Highway 101, Suite 12 Solana Beach, Arizona 92075
Utility:	Arizona-American Water Company Attn: Director, Engineering 19820 N. 7 <sup>th</sup> Street, Suite 201 Phoenix, Arizona 85024

Either party may change its address by notifying the other party in writing.

8.10. Utility is not an agent for Developer and will not incur any costs or expenses on behalf of Developer. Developer is not an agent for Utility and will not incur any costs or expenses on behalf of Utility.

8.11. This Agreement is governed by the laws of the State of Arizona, and its performance is subject to regulation by the State of Arizona, and Arizona and federal regulatory agencies with jurisdiction.

8.12. There are no oral or collateral agreements between the parties concerning the subject matter of this Agreement and any reasonably-related matters; this Agreement sets forth the entire understanding between the parties. All changes or amendments to this Agreement must be in writing and signed by the parties. This Agreement applies to each Phase of the Distribution Facilities and the Common Facilities.

8.13. Developer may not assign its rights, obligations, and interest in this Agreement without Utility's prior written consent, which consent shall not be unreasonably withheld or delayed. Any attempted assignment except as provided in this Paragraph 8.13 is void. This Agreement binds, and inures to the benefit of, the parties, and their respective legal representatives, successors and assigns.

8.14. This Agreement is void—unless waived in writing by Utility—if Developer does not begin construction of Distribution Facilities for the first Phase of the Development within one year from the date of this Agreement. At least 30 days before the first anniversary of the date of this Agreement, Developer may issue a written request to Utility to extend the requirements of this Paragraph 8.14 for a period of up to six months. The request for extension must set forth with particularity the circumstances requiring the extension, state Developer's new proposed construction start date, and include a reasonable schedule to meet that date. Utility's approval of the request for extension will not be unreasonably withheld.

8.15. This Agreement may be executed in counterparts.

8.16. Time is of the essence in the performance of this Agreement.

Signed by the parties as of May 23 2005.

Arizona-American Water Company,  
an Arizona corporation

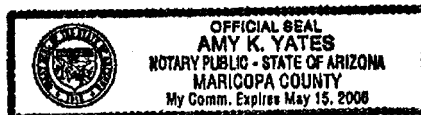
By: [Signature]  
Robert J. Kuta  
Vice President Service Delivery

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of JUNE, 2005, by Robert J. Kuta, Vice President Service Delivery of Arizona-American Water Company, an Arizona corporation, on behalf of the corporation.

Amy K. Yates  
Name Amy K. Yates  
EXEC. ASSISTANT  
Title

My Commission expires:



May 15, 2006

**Fidence Development, LLC**  
an Arizona limited liability company

By:

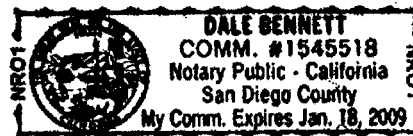
**Chris Read**  
Manager

STATE OF California )  
 ) ss.  
County of San Diego )

The foregoing instrument was acknowledged before me this 23 day of May, 2005, by Chris Read, Manager of Fidence Development, LLC, an Arizona limited liability company, on behalf of the company.

Dale Bennett  
Name  
Notary Public  
Title

My Commission expires: Jan. 18, 2009



*[Signature]*

## LIST OF REQUIRED EXHIBITS

(all exhibits are to be 8-1/2 x 11)

### EXHIBIT A – Page 1 - Property Legal Description (prepared by engineer)

(This needs to be stamped by a professional engineer and state the total acreage at the bottom of the legal description.)

### Page 2 – Metes and Bounds exhibit (prepared by engineer)

(This needs to show bearings and distances for the property boundary)

### EXHIBIT B – Page 1 – Distribution Facilities exhibit (prepared by engineer)

(This needs to show the Development with all of the waterlines that will be owned by Utility, up to and including the meter).

### Page 2 – Cost Estimate of Distribution Facilities (prepared by engineer)

(This needs to show the cost estimate, signed by a professional engineer if done by an outside consultant).

### EXHIBIT C – Page 1 – Common Facilities exhibit (prepared by engineer).

(This needs to show the Common Facilities Sites, together with all Common Facilities).

### Page 2 – Cost Estimate of Common Facilities (prepared by engineer)

(This needs to show the cost estimate, signed by a professional engineer if done by an outside consultant).

### EXHIBIT D – Master Plan showing phasing of Distribution Facilities (prepared by engineer)

# **EXHIBIT A**

**EXHIBIT A**  
**WATER SERVICE AREA**  
**LEGAL DESCRIPTION**

All that portion HAVASU GARDEN ESTATES EAST, Tract No. 1122 recorded as Fee No. 72-8711, Mohave County Records, lying in the north half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona described as follows:

Commencing at the North Quarter Corner of said Section 17;  
Thence North 89°54'36" East along the north line of said Section 17, a distance of 145.02 feet to the northwesterly corner of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, and the true POINT OF BEGINNING;

Thence continuing North 89°54'36" East along the north line of said Section 17 and the north line of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 1822.47 feet to the west line of London Bridge Road and the northeast corner of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 12°53'24" East along said west line of London Bridge Road, a distance of 718.54 feet to the northeasterly corner of Lot 825 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 76°57'09" West along the northerly line of said Lot 825 and the westerly extension thereof, a distance of 186.45 feet to the northeasterly corner of Lot 102 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 89°57'57" West along the north line of Lots 86 through 102 and Lot 442 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 1152.31 feet to the northwest corner of said Lot 442;

Thence South 12°53'33" East along the westerly line of said Lots 442 and 515 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 268.99 feet to the southwest corner of said Lot 515;

Thence South 89°57'12" West along the north line of Lots 517 through 521 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 297.88 feet to the northwest corner of said Lot 521;

Thence South 12°53'33" East, a distance of 103.71 feet to the southwest corner of said Lot 521;

Thence South 02°23'18" West, a distance of 60.05 feet to the northwest corner of Lot 549 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 12°53'33" East along the westerly lines of Lots 549, 550, 585 and 586 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 482.41 feet to the southwest corner of said Lot 586;

Thence South 06°36'25" West, a distance of 60.40 feet to the northwest corner of Lot 621 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 00°00'33" East along the westerly lines of Lots 621, 623, and 658 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 366.39 feet to the southwest corner of said Lot 658;

Thence North 89°59'27" East, a distance of 59.81 feet to the southeast corner of said Lot 658 and the northwest corner of Lot 660 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 00°00'33" East along the west line of Lots 660, Lot 697 and Lot 698 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 367.43 feet to the southwest corner of said Lot 698;

Thence South 02°11'05" East, a distance of 60.04 feet to the northwest corner of Lot 348 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

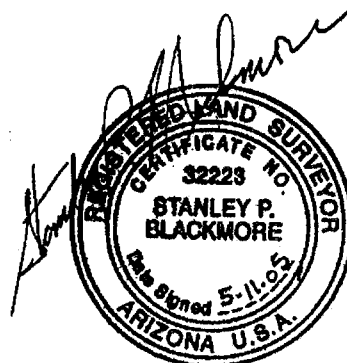
Thence South 00°00'33" East along the westerly line of said Lot 348 and the southerly extension thereof, a distance of 147.52 feet to the south line of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

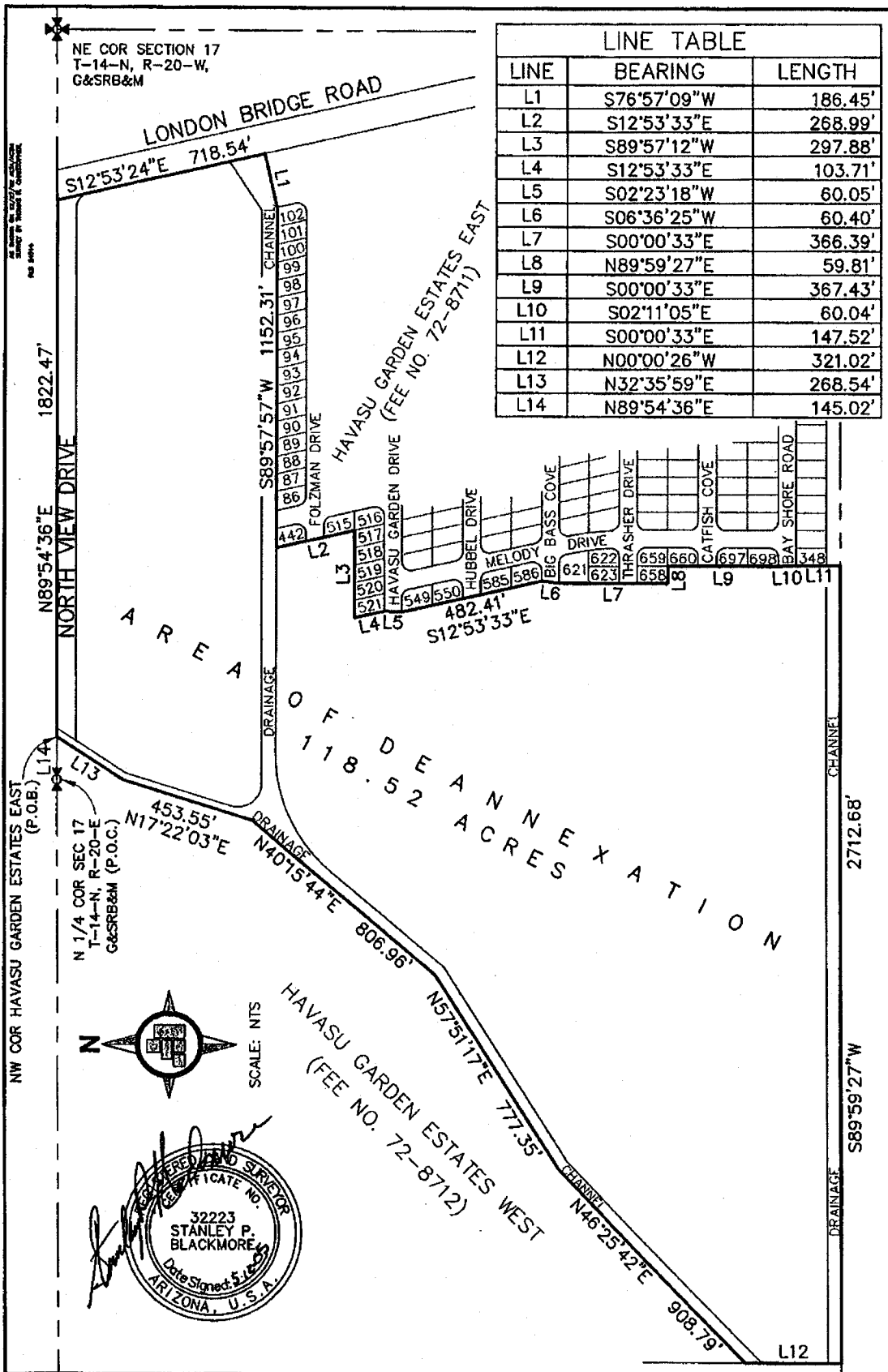
Thence South 89°59'27" West, a distance of 2712.68 feet to the southwest corner of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence along the westerly line of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, the following six (6) courses:

- 1) North 00°00'26" West, 321.02 feet;
- 2) North 46°25'42" West, 908.79 feet;
- 3) North 57°51'17" East, 777.35 feet;
- 4) North 40°15'44" East, 806.96 feet;
- 5) North 17°22'03" East, 453.55 feet;
- 6) North 32°35'59" East, 268.54 feet to the POINT OF BEGINNING.

Containing 118.52 Acres, more or less.





FOR: FIDENCE DEVELOPMENT

SCALE: NTS

SHEET: 2 OF 2



**MORRISON  
MAIERLE, INC.**  
an Arizona Corporation

DRAWING: WAT\_SER\_AR.DWG  
PROJECT: 8406.001  
DRAWN: spb  
CHECKED: spb

EXHIBIT "A"

WATER SERVICE AREA

**PARCEL V – WATER TANK SITE  
LEGAL DESCRIPTION**

All that portion of the north half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona described as follows:

Commencing at the North Quarter Corner of said Section 17;

Thence South  $89^{\circ}58'57''$  West along the north line of said Section 17, a distance of 267.23 feet;

Thence South  $00^{\circ}01'03''$  East, a distance of 60.00 feet to the POINT OF BEGINNING;

Thence continuing South  $00^{\circ}01'03''$  East, a distance of 245.51 feet;

Thence North  $89^{\circ}58'57''$  East, a distance of 95.65 feet;

Thence North  $44^{\circ}31'45''$  East, a distance of 159.79 feet;

Thence North  $00^{\circ}01'03''$  West, a distance of 131.64 feet;

Thence South  $89^{\circ}58'57''$  West parallel with and 60.00 feet south of the north line of said Section 17, a distance of 207.74 feet to the point of beginning.

Containing 1.024 Acres, more or less.



NORTH 1/4 CORNER SECTION 17  
FOUND BRASS CAPPED MONUMENT

NE CORNER SECTION 17  
FOUND BRASS CAPPED MCDE  
MONUMENT IN HANDHOLE

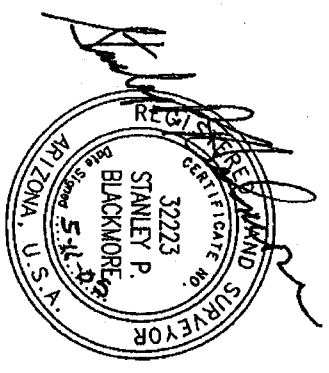
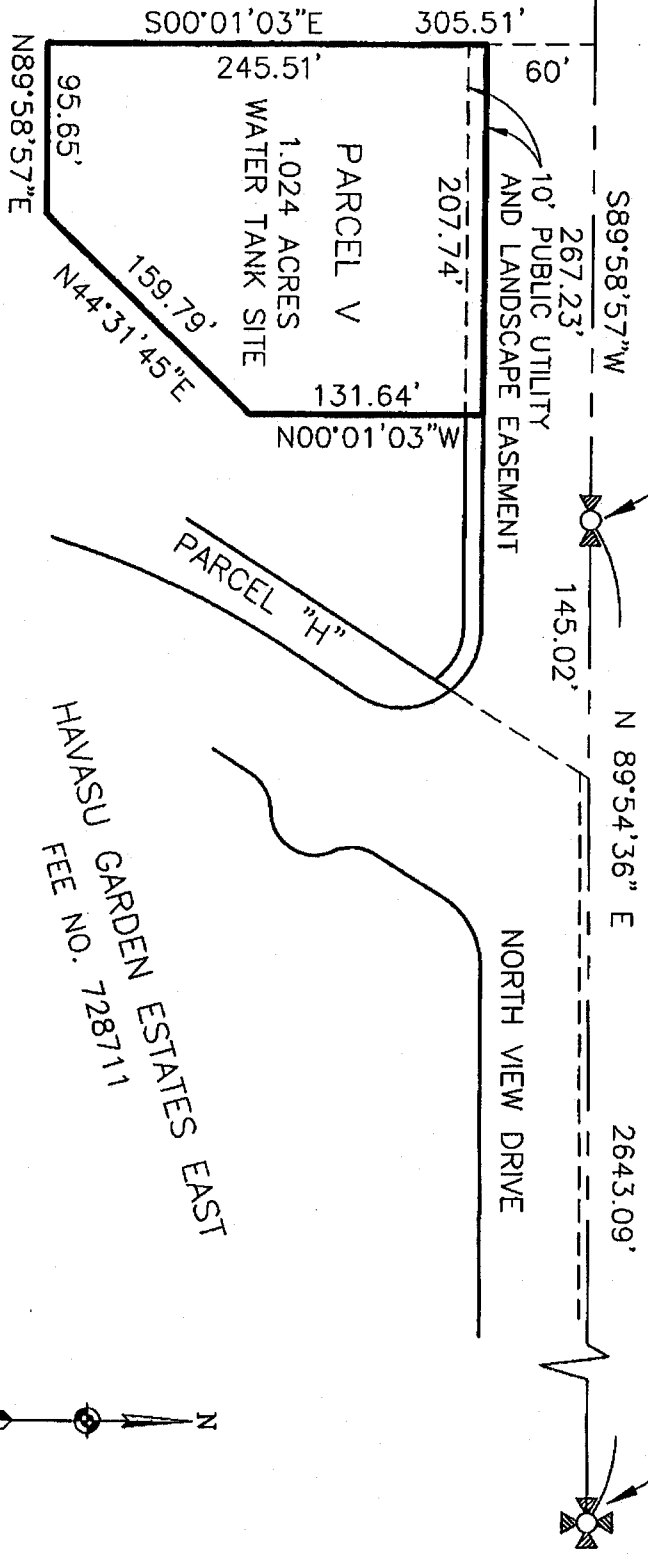
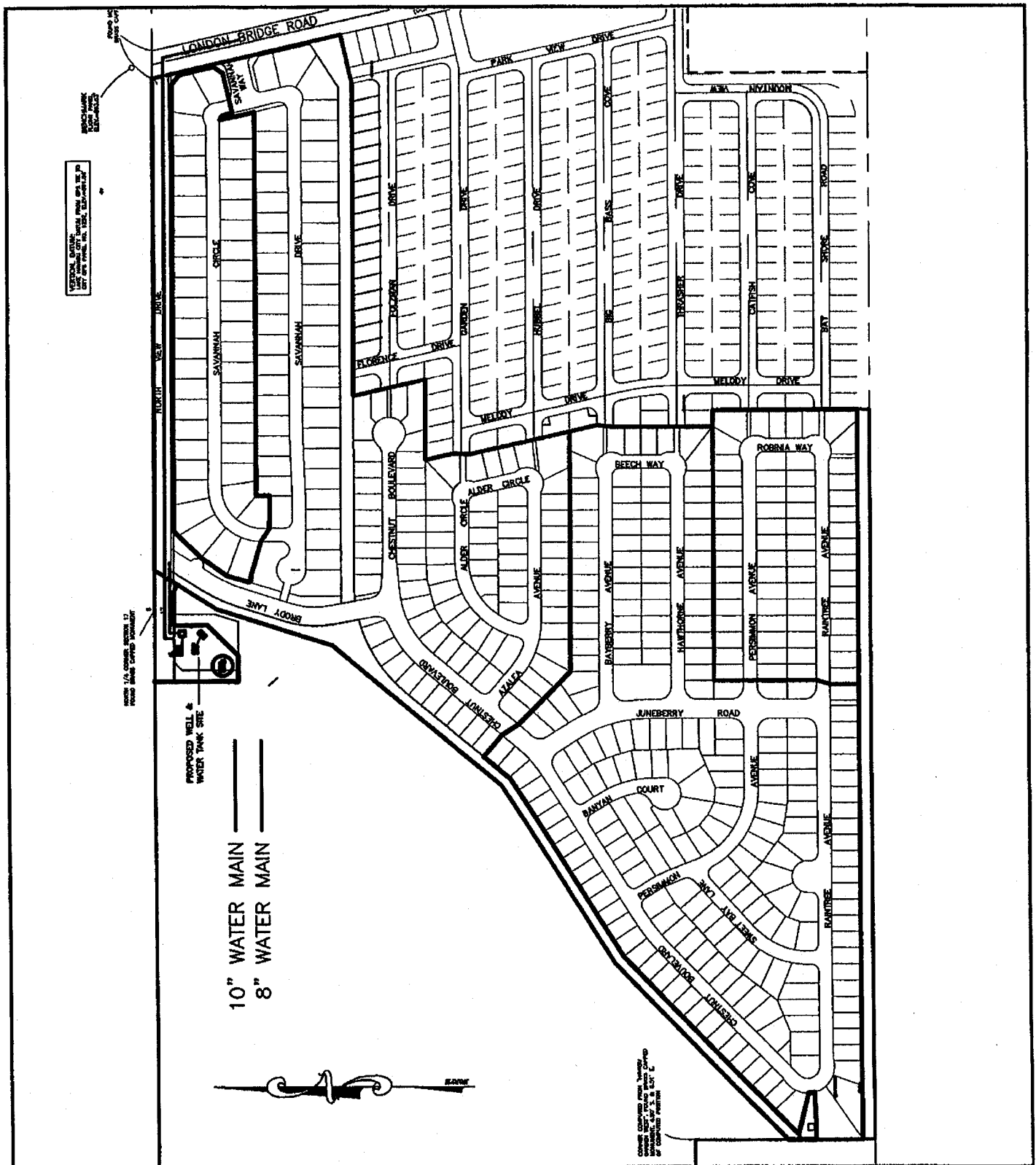


EXHIBIT A  
PARCEL V - WATER TANK SITE  
FOR  
FIDENCE DEVELOPMENT, LLC  
SEC. 17, T. 14 N., R. 20 W., G.&S.R.B.&M.

# **EXHIBIT B**



FOR: **NORTH POINTE SUBDIVISION**

SCALE: 1" = 500'

SHEET: 1 OF 1



DRAWING: WATER\_EXT\_EXH

PROJECT: 8406.001

DRAWN: WFW

CHECKED: JM

**OFFSITE WATER MAIN  
 EXHIBIT B**

Project: North Pointe Subdivision  
 Project Number: 8406.001  
 Calculated By: NL  
 Checked By: DNM  
 Date: May 11, 2005

**WATER DISTRIBUTION SYSTEM COST ESTIMATE**  
**NORTH POINTE SUBDIVISION -SITES A & B (Phases A thru F)**

Description	Quantity	Units	Unit Price	Final Cost
<b>Site A</b>				
6-inch C-900 PVC Water Pipe & Fittings	2,600	LF	\$12.00	\$31,200
8-inch C-900 PVC Water Pipe & Fittings	1,450	LF	\$18.00	\$26,100
10-inch C-900 PVC Water Pipe & Fittings	650	LF	\$30.00	\$19,500
3/4-inch Single Lot Service w/Meter Box	93	EA	\$350.00	\$32,550
Fire Hydrant	8	EA	\$2,100.00	\$16,800
Line Valves	18	EA	\$750.00	\$13,500
Air Release Valve (1)	1	EA	\$2,500.00	\$2,500
PRV in Manhole with Bypass	1	EA	\$12,500.00	\$12,500
<b>Site B (includes connection to exist. AAW System)</b>				
6-inch C-900 PVC Water Pipe & Fittings	12,600	LF	\$12.00	\$151,200
8-inch C-900 PVC Water Pipe & Fittings	2,200	LF	\$18.00	\$39,600
10-inch C-900 PVC Water Pipe & Fittings	800	LF	\$30.00	\$24,000
3/4-inch Single Lot Service w/Meter Box	362	EA	\$350.00	\$126,700
Fire Hydrant	28	EA	\$2,100.00	\$58,800
Line Valves	56	EA	\$750.00	\$42,000
Air Release Valve (1)	2	EA	\$2,500.00	\$5,000
PRV in Manhole with Bypass	1	EA	\$12,500.00	\$12,500
<b>CONSTRUCTION SUBTOTAL</b>				<b>\$615,000</b>
Construction Contingency			10.00%	\$62,000
<b>ESTIMATED PROJECT COST, Phases A - F - 2005</b>				<b>\$677,000</b>

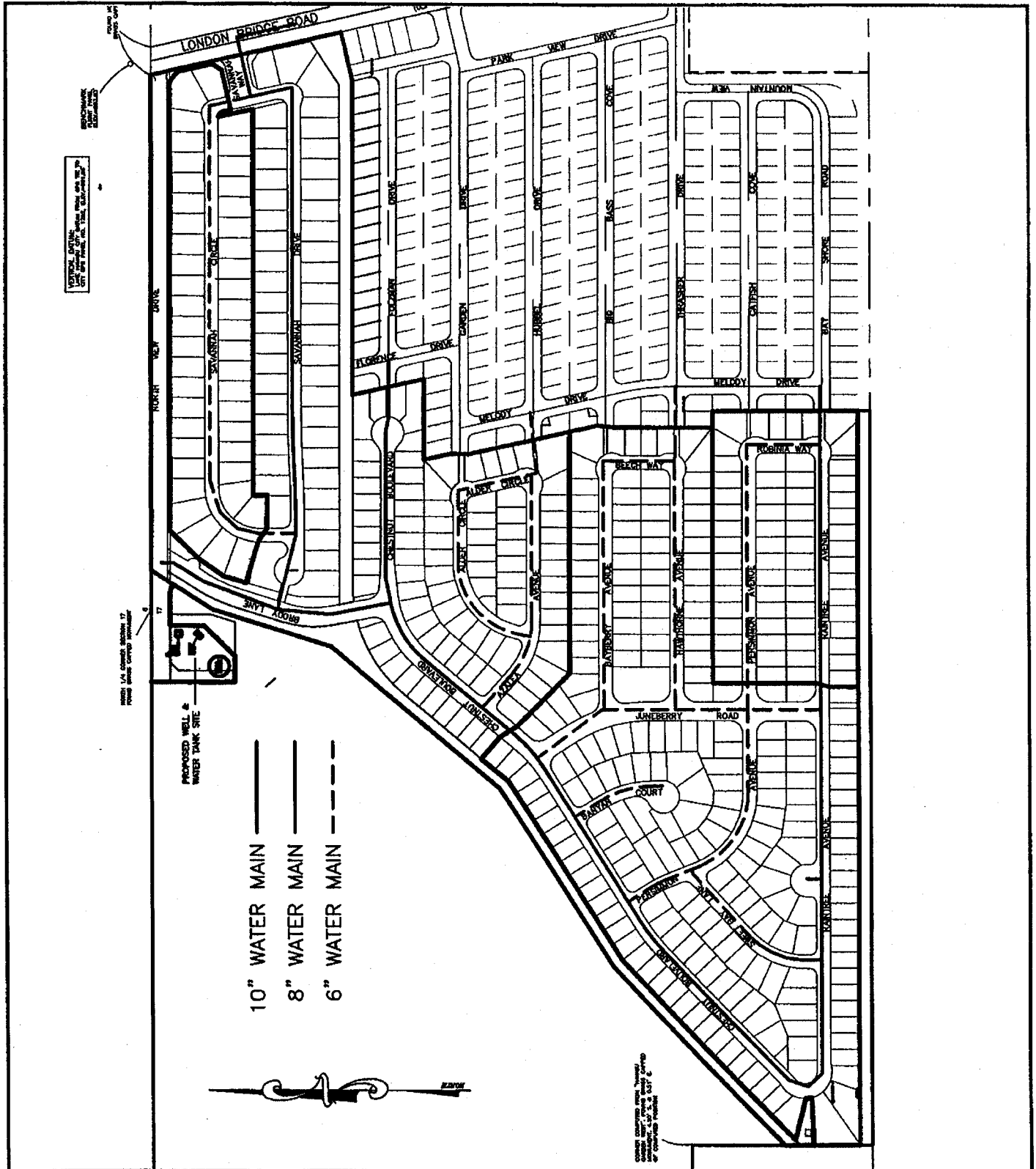
(1) Average of City Bid Tabs

H:\8406\8406001\Docs\XLS\Cost Estimates - Revision 051105.xls\Water Distribution



EXHIBIT B

# **EXHIBIT C**



FOR: **NORTH POINTE SUBDIVISION**

SCALE: 1" = 500'

SHEET: 1 OF 1

**MORRISON  
MAIERLE, INC.**  
an Arizona Corporation

DRAWING: WATER\_EXT\_EXH  
PROJECT: 8406.001  
DRAWN: WFW  
CHECKED: JM

**DISTRIBUTION MAINS  
EXHIBIT C**

Project: North Pointe Subdivision  
 Project Number: 8406.001  
 Calculated By: NL  
 Checked By: DNM  
 Date: May 11, 2005

**WATER STORAGE / TREATMENT / PUMPING / WELL COST ESTIMATE  
NORTH POINTE SUBDIVISION**

Description	Quantity	Units	Unit Price	Final Cost
<b>TO SERVE PHASES A - F</b>				
10-inch C-900 PVC Water Pipe	350	LF	\$30.00	\$10,500
8-inch C-900 PVC Water Pipe	1,850	LF	\$18.00	\$33,300
12-inch Yard Piping, Valves, and Appurtenances	1	LS	\$32,000.00	\$32,000
Water Tank - 1st Tank				
750,000 gallon Tank	1	EA	\$300,000.00	\$300,000
Excavation/Foundation Work	1	LS	\$85,000.00	\$85,000
Electrical Controls	1	EA	\$90,000.00	\$90,000
Standby Generator	1	LS	\$50,000.00	\$50,000
Altitude Valve and Concrete Vault	1	LS	\$15,000.00	\$15,000
Bypass Check Valve and Concrete Vault	1	LS	\$15,000.00	\$15,000
Fencing	800	LF	\$25.00	\$20,000
Booster Pump Station				
Pumps, Fire Pump, Structure	1	LS	\$90,500.00	\$90,500
Electrical Controls & Service	1	LS	\$75,000.00	\$75,000
Surge/Pressure Tank	1	LS	\$35,000.00	\$35,000
Foundation	1	LS	\$10,000.00	\$10,000
Gauges/Electrical Controls	1	LS	\$10,000.00	\$10,000
Production Well				
Well Drilling/Installation	1	LS	\$180,000.00	\$180,000
Well House/Chlorination/Pumps/Piping	1	LS	\$150,000.00	\$150,000
<b>Construction Subtotal</b>				<b>\$1,202,000</b>
Construction Contingency			10.00%	\$121,000
<b>Phases A thru F Subtotal</b>				<b>\$1,323,000</b>

<b>ESTIMATED PROJECT COST, Well Site - 2005</b>	<b>\$1,323,000</b>
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H:\8406\8406001\Docs\XLS\[Cost Estimates - Revision 051105.xls]Water Supply-Offsite

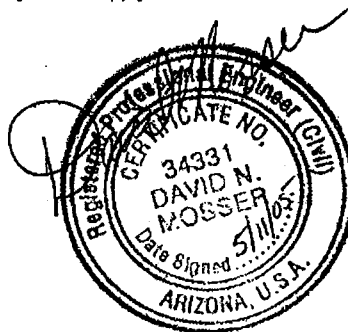
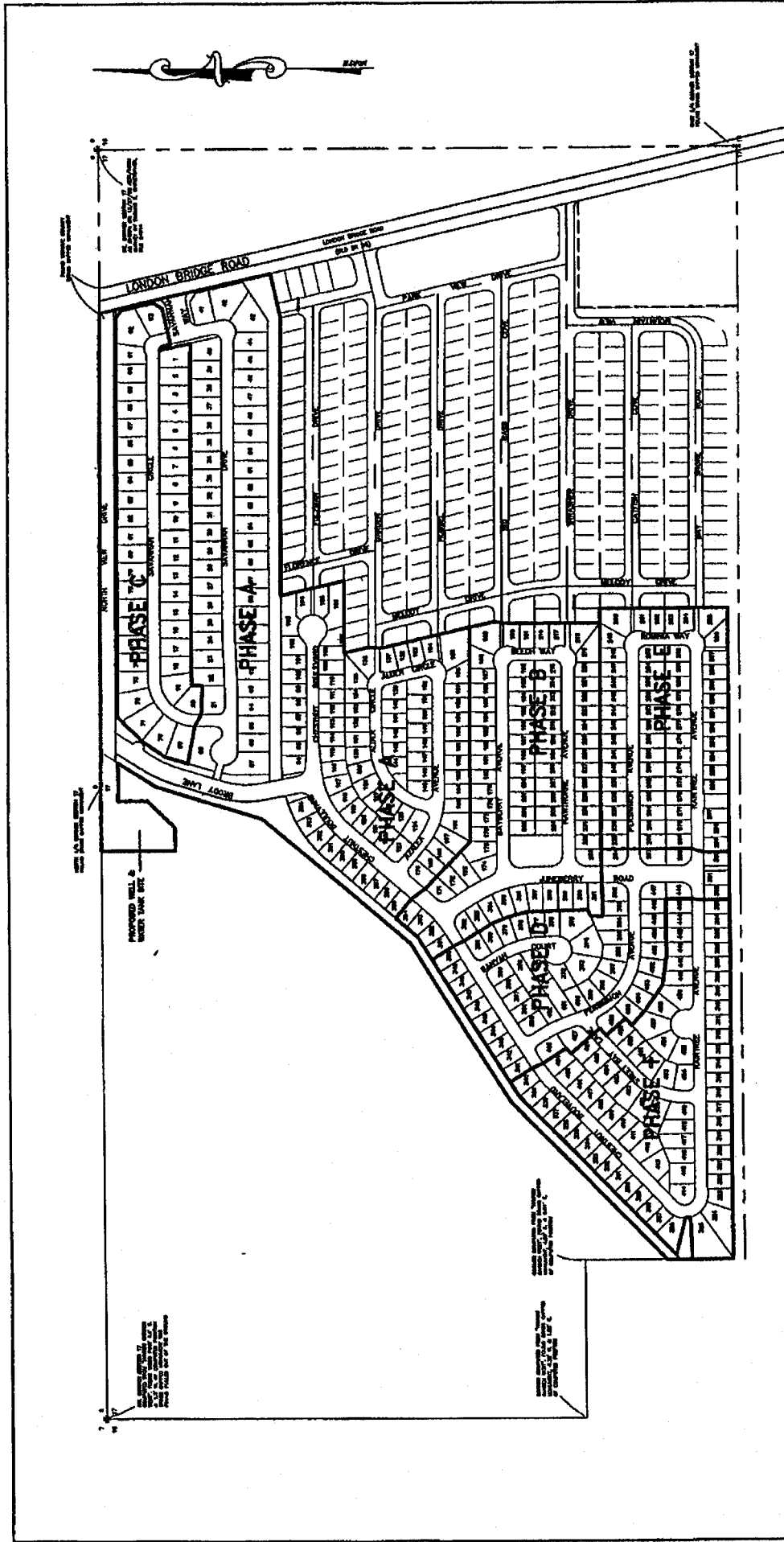


EXHIBIT C

# **EXHIBIT D**



FOR NORTH POINTE SUBDIVISION		SCALE: NTS	SHEET: 1 OF 1
MORRISON MAIERLE, INC. an Affiliates Corporation		PHASING EXHIBIT	
PHASING PHASING EXHIBIT REV		PROJECT: 8406.001	
		DRAWN: WFW	
		CHECKED: JM	

EXHIBIT D

**EXHIBIT "C"**

**Metli, Robert**

---

**From:** Martin.Stanek@amwater.com [mailto:Martin.Stanek@amwater.com]  
**Sent:** Wednesday, October 01, 2008 4:57 PM  
**To:** Crockett, Jeff  
**Cc:** Troy.Day@amwater.com; Ian.Crooks@amwater.com; Thomas.Williams@amwater.com;  
Jeffrey.Stuck@amwater.com  
**Subject:** North Pointe

After your telephone call to me last week, I discussed your two requests on behalf of Read Homes, the North Pointe developer, internally here at Arizona-American Water Company. The following is our response.

Read Homes is required under its existing agreement with AAW to contribute to AAW a new well as a condition to Read Homes receiving more than 80 water meters for the development. You proposed that, in lieu of Read Homes providing that new well at this time, Read Homes would pay to upsize an existing AAW pump and would defer construction of the new well for 18 months. You also proposed that Read Homes would provide performance bonds to secure its eventual obligation to construct the new well. Under this scenario, Read Homes would be entitled to receive meters in excess of the initial 80. This proposal is not acceptable to AAW. Without the new well, AAW does not have sufficient water supply for more than 80 connections in the North Pointe development. Despite the assurance provided by the performance bonds, this proposal shifts the risk of an unacceptable well onto AAW. If Read Homes ultimately does not provide the new well, and AAW is required to draw upon the performance bonds for the new well, then AAW bears the risk of drilling an unacceptable well. In that case, AAW will have exhausted its remedy under the bonds, but will not have an acceptable well. In addition, if AAW is required to perpetually rely on the increased production from its existing well to serve North Pointe, AAW will not be able to use that increased production for other requirements. AAW expects to need that additional production, in addition to the required North Pointe well, to satisfy its future water requirements in this water district. Once AAW initiates water service to a customer, it cannot discontinue that service just because its future water supply requirements were not satisfied as it had anticipated. For that reason, we need to require that the supply be permanently available before the service commitment is made.

You also proposed an amendment to the existing agreement with AAW to remove the requirement for Read Homes to provide arsenic treatment. You proposed that, instead, Read Homes would pay the AAW arsenic remediation tariff fees in effect in that AAW water district. That, too, is unacceptable to AAW. Currently, Read Homes is contractually obligated to provide a well source, and if necessary to meet drinking water standards, treatment equipment under its agreement with AAW. It is also required to pay all applicable tariff fees. Because Read Homes currently has both of those obligations, Read Homes is not proposing to provide any consideration for AAW's amendment of the LXA. As we discussed when we last met, it is certainly Read Homes' prerogative to petition the Arizona Corporation Commission to consider its obligations regarding arsenic treatment. The existing agreement between Read Homes and AAW was submitted to the Commission last month. The arsenic tariff fees will be due for each lot in the development on the date that is 15 days after AAW receives notice that the Utilities Division of the Commission approved the agreement.

Please contact me if you have any questions.

Martin J. Stanek  
Corporate Counsel  
American Water - Western Division  
19820 N. 7th St. Suite 201  
Phoenix, AZ 85024

623.445.2427 - office  
623.256.2135 - mobile  
martin.stanek@amwater.com

2/27/2009

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2/27/2009

**EXHIBIT "D"**

Revised

Arizona American Water Company  
(Name of Company)

Havasu Water District  
(Name of Service Area)

RECEIVED

2005 NOV 22 P 2:17

Table of Contents

<b>AZ CORP COMMISSION DOCUMENT CONTROL</b>	General Water Service	W-01303A-05-0280	1 - Original
RI-1	Reserved	WS-01303A-02-0867	2 - Original
R-2	Reserved	WS-01303A-02-0869	3 - Original
		WS-01303A-02-0870	4 - Original
MISC-1	Miscellaneous Service Charges		5 - Original
AIHUF-1	Arsenic Impact Hook-Up Fee		
	Rules and Regulations		ACC No. 1 Thru ACC No. 34

RECEIVED  
2005 NOV 22 P 2:18  
AZ CORP COMMISSION  
DOCUMENT CONTROL

ISSUED: November 14, 2005 EFFECTIVE: November 14, 2005  
Month Day Year Month Day Year  
ISSUED BY: Thomas M. Broderick, Manager, Rates  
19820 N. 7<sup>th</sup> St., Suite 201, Phoenix, Arizona 85024

Decision Nos. 67093 and 68310

	Original		SHEET NO.	5
Arizona-American Water Company			SHEET NO	
(Name of Company)	Havasu Water District			
	(Name of Service Area)			

## ARSENIC IMPACT HOOK-UP FEE AIHUF-1

### I. Purpose and Applicability

The purpose of the Arsenic Impact Fee ("AIHUF") payable to **Arizona-American Water Company – Havasu Water District** ("the Company") pursuant to this tariff is to equitably apportion the costs of constructing water treatment plant facilities to treat and remove arsenic. These charges are applicable to all new service connections established after the effective date of the tariff. The charges are one-time charges and are payable as a condition to the Company's establishment of service, as more particularly provided below.

### II. Definitions

Unless the context otherwise requires, the definitions set forth in R-14-2-401 of the Arizona Corporation Commission's ("Commission") rules and regulations governing water utilities shall apply in interpreting, this tariff schedule.

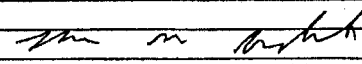
"Applicant" means any party entering into an agreement with the Company for the installation of water facilities to serve new service connections.

"Arsenic Treatment Facilities" means treatment equipment and related appurtenances necessary for the removal of arsenic through treatment of water to meet the 10 parts per billion ("ppb") arsenic standards.

"Company" means Arizona-American Water Company – Havasu Water District, an Arizona corporation.

"Main Extension Agreement" means any agreement whereby an applicant agrees to advance the costs of the installation of water facilities to the Company to serve new service connections, or install water facilities to serve new service connections and transfer ownership of such water facilities to the Company, which agreement shall require the approval of the Commission's Utilities Division (same as line extension agreement).

"Service Connection" means and includes all service connections for residential, commercial, industrial, or other uses, regardless of meter size.

ISSUED:	Nov. 14, 2005		EFFECTIVE:	Nov. 14, 2005
	Month Day Year			Month Day Year
ISSUED BY:		Thomas M. Broderick, Manager, Rates		
		19820 N. 7 <sup>th</sup> St., Suite 201, Phoenix, Arizona		
		Decision No. 68310		

	Original		SHEET NO.	5a
Arizona-American Water Company			SHEET NO	
(Name of Company)	Havasu Water District			
	(Name of Service Area)			

### ARSENIC IMPACT HOOK-UP FEE AIHUF-1 (continued)

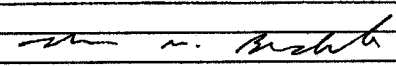
#### III. Arsenic Impact Fee Charges

Each new service connection shall pay the Arsenic Impact Hook-up Fee derived from the following table:

ARSENIC IMPACT FEE TABLE		
Meter Size	Meter Factor	Fee
5/8" x 3/4"	1	\$870
3/4"	1.5	\$1,305
1"	2.5	\$2,175
1-1/2"	5	\$4,350
2"	8	\$6,960
3"	16	\$13,920
4"	25	\$21,750
6"	50	\$43,500
8" or larger	80	\$69,600

#### IV. Terms and Conditions

- (A) Assessment of One Time AIHUF Charge: The AIHUF may be assessed only once per service connection, or lot within a platted subdivision (similar to service line and meter installation charges). However, this provision does not exempt from the AIHUF, any newly created parcel(s) which are the result of further subdivision of a lot or land parcel and which do not have a service connection.
- (B) Use of AIHUF: AIHUF may only be used to pay for capital items of arsenic treatment facilities (including engineering and design costs for such facilities), or for repayment of loans obtained for installation of arsenic treatment facilities. AIHUF shall not be used for expenses, maintenance, or operational purposes.

ISSUED:	Nov. 14, 2005		EFFECTIVE:	Nov. 14, 2005
	Month Day Year			Month Day Year
ISSUED BY:		Thomas M. Broderick, Manager, Rates		
		19820 N. 7 <sup>th</sup> St., Suite 201, Phoenix, Arizona		
		Decision No. 68310		

	Original		SHEET NO.	5b
Arizona-American Water Company			SHEET NO.	
(Name of Company)	Havasu Water District			
	(Name of Service Area)			

### ARSENIC IMPACT HOOK-UP FEE AIHUF-1 (continued)

(C) Time of Payment:

- (1) In the event that the Applicant is required to enter into a main extension agreement, whereby the Applicant agrees to advance the costs of installing mains, valves, fittings, hydrants and other on-site improvements in order to extend service in accordance with R-14-2-406(B), payment of the charges required hereunder shall be made by the Applicant within 15 calendar days after receipt of notification from the Company that the Utilities Division of the Commission has approved the main extension agreement in accordance with R-14-2-406(M).
- (2) In the event the Applicant is not required to enter into a main extension agreement, the charges hereunder shall be due and payable at the time the service line and meter installation charge is due and payable.

- (D) Failure to Pay Charges, Delinquent Payments: Under no circumstances will the Company set a meter or otherwise allow service to be established if the Applicant has not paid in full all charges as provided by this AIHUF tariff.

- (E) AIHUF Non-refundable: The amounts collected by the Company pursuant to the AIHUF shall be non-refundable advances in aid of construction.

- (F) Use of Charges Received: All funds collected by the company pursuant to the hookup fee shall be treated as an offset to the costs of arsenic treatment facilities (including engineering and design costs for such facilities) in the ACRM step one and step two increases and in rate base in any future ratemaking proceeding. The company shall maintain on its books an accounting of the arsenic treatment facilities hookup fees collected pursuant to this tariff and an accounting of the arsenic treatment facilities constructed subsequent to adoption of this tariff.

- (G) AIHUF in Addition to Other Charges: The AIHUF shall be in addition to any costs associated with a main extension agreement for on-site facilities, and are in addition to the amounts to be advanced pursuant to charges authorized under other sections of this tariff.

- (H) Disposition of Excess Funds: After all necessary funds are collected to pay for all Arizona Department of Environmental Quality required arsenic treatment facilities or the AIHUF has been terminated by order of the Commission, any funds not necessary to pay for arsenic treatment facilities remaining in the trust shall be refunded. The manner of the refund shall be determined by the Commission at the time a refund becomes necessary.

ISSUED:	Nov. 14, 2005		EFFECTIVE:	Nov. 14, 2005
	Month Day Year	<i>th m. broderick</i>		Month Day Year
ISSUED BY:		Thomas M. Broderick, Manager, Rates		
		19820 N. 7 <sup>th</sup> St., Suite 201, Phoenix, Arizona		
		Decision No. 68310		

**EXHIBIT "E"**

received via E-mail 6-5-08

**INVOICE**



**Arizona  
American Water**

PO BOX 822192  
Philadelphia, PA 19182-2192

Date	Invoice No.
02/07/07	07-000016
Account No.	
50243135	

FIDENCE DEVELOPMENT, LLC  
ATTN: CHRIS READ  
21001 N TATUM BLVD, SUITE 78-1630  
PHOENIX, AZ 85050

Arizona American Water Company

Fee Type	Reference	Project	Quantity	Fee	Invoice Amount
				Amount	
AIHUF 5/8	10012	North Pointe Phase A	136	\$870.00	\$118,320.00
Meter 5/8	10012	North Pointe Phase A	136	\$130.00	\$17,680.00
AIHUF 1	10012	North Pointe Phase A	3	\$2,175.00	\$6,525.00
Meter 1	10012	North Pointe Phase A	3	\$240.00	\$720.00

**Balance Due** \$143,245.00

Please note that these calculations are based upon tariffs in effect as of 11/6/06. All tariffs are subject to change without prior notice. In the event of a change prior to receipt of payment, the balance due will be changed to reflect the new tariffs.

**Pay Upon Receipt**

Return this Portion with Payment	
<b>MAKE CHECKS PAYABLE &amp; REMIT TO:</b>	
<b>American Water Capital Corp.</b> Attn: Arizona American Water Special Deposits PO Box 822192 Philadelphia, PA 19182-2192	
<b>ADDRESS SERVICE REQUESTED</b>	
Invoice Number: 07-000016 Account: 50243135 Invoice Date: 02/07/07  Amount Billed \$143,245.00	

**ACCOUNT CODING:**

Business Unit	Object	Subledger	SL Type	Amount
237305	252120	23910012	S	\$18,400.00
237305	271160	23910012	S	\$124,845.00

**EXHIBIT "F"**

**Aaron Read**

Fidence Development, LLC  
420 Stevens Ave Suite 230  
Solano Beach, CA 92075

**Development Services**

Name Karan Moore  
Phone 623-445-2441  
Fax 623-445-2452  
E-Mail Karan.moore@amwater.com

August 24, 2007

**Final Acceptance - North Pointe Phase A**

Dear Aaron Read,

Arizona American Water (AAW) has completed the Final Inspection of the water facilities installed to serve your project and hereby issues this **LETTER OF FINAL ACCEPTANCE** in regard to the subject facilities. I have enclosed a copy of the Final Inspection Report for the subject development with this letter for your use.

This approval indicates that all the required submittals and approvals have been met and that the invoice data has been received and processed. As per the Line Extension Agreement, the one-year warranty period begins from the date of written Operational Acceptance of **11/13/2006**.

While AAW has issued Final Acceptance for Phase A of the North Pointe subdivision if it is determined that Fidence Development is required to pay for the Arsenic Hook Up Fee for all of North Pointe, the 80 lots within this phase of the project will need to be paid for before any further approvals can be made for the remaining Phase of North Pointe. If you have any questions concerning this requirement please contact Ian Crooks at 623.445.2404.

Should you have any questions concerning this letter of Final Acceptance or require additional information, please feel free to contact me directly.

Sincerely,



Karan Moore  
Development Coordinator

<Final Inspection Form>

CW, AAW

Arizona American Water

101 Corporate Center  
19820 N. 7<sup>th</sup> Street - Suite 201  
Phoenix, Arizona 85024  
USA

T +1 623 445 2400  
F +1 623 445 2452  
I www.amwater.com

**EXHIBIT "G"**

**Mr. Chris Read**

Fidence Development  
731 South Highway 101, Suite 12  
Solana Beach, AZ 92075

Arizona American Water  
Development Services

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November 13, 2007

**Subject: Final Acceptance  
North Pointe Booster Pump Station & Tank**

Dear Mr. Read:

Per Line Extension Agreement (LXA) #10012 for North Pointe, **Final Acceptance is hereby granted** for the Water Booster Pump Station (BPS) and Tank. All punch list items outlined in the Operational Acceptance letter have been addressed.

If you have any questions regarding this Final Acceptance, please feel free to contact me at (623) 445-2404 or at [Ian.Crooks@amwater.com](mailto:Ian.Crooks@amwater.com).

Sincerely,

ARIZONA AMERICAN WATER

  
Ian C. Crooks, P.E.  
Sr. Operations Engineer

cc: Aaron Read/Fidence (Read Homes)  
Jeff Stuck/AAW  
Dave Evans/AAW  
Joe Gross/AAW  
Karan Moore/AAW  
Cliff Wahlers/AAW

Arizona American Water

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